

# Chapter 1

## OVERVIEW OF THE PROGRAM AND PLAN

## **PART I: THE PHA**

### **1-I.A. OVERVIEW**

Miami County Metropolitan Housing Authority administers the housing programs available to low income families in the Miami County, Ohio area. Its specific jurisdiction includes all of Miami County, Ohio including Troy, Tipp City, Piqua and surrounding villages and townships.

The housing authority administers the HCV Voucher Program and Public Housing Program to facilitate the housing needs of its clients in the community. Currently the MMHA has 985 active vouchers and 127 units at three sites in the Public Housing Program. The sites consist of:

- Morris House, 1 W. Franklin Street, Troy, Ohio (Site 62-3)
- Floral View, 1201 Long Street, Troy, Ohio (Site 62-4)
- Washington Commons, 950 McKinley Avenue, Piqua, Ohio (Site 62-5)

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

Public housing is funded by the federal government and administered by the Miami County Metropolitan Housing Authority (MMHA) for the jurisdiction of Miami County.

Public Housing Authorities (PHAs) are governed by a board of officials. The board establishes policies under which the PHA conducts business, and ensures that those policies are followed by PHA staff.

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

The principal staff member of the PHA is the executive director (ED), who is selected and hired by the board. The ED oversees the day to day operations of the PHA and is directly responsible for carrying out the policies established by the commissioners. The ED's duties include hiring, training, and supervising the PHA's staff, as well as budgeting and financial planning for the agency. Additionally, the ED is charged with ensuring compliance with federal and state laws, and program mandates.

### **1-I.C. PHA MISSION**

The MMHA's mission is to provide safe, decent and sanitary housing conditions for very low-income families and to manage resources efficiently. The MMHA is to promote personal, economic and social upward mobility to provide families the opportunity to make the transition from subsidized to non-subsidized housing.

## **1-I.D. THE PHA’S COMMITMENT TO ETHICS AND SERVICE**

As a public service agency, MMHA is committed to providing excellent service to all public housing applicants, residents, and the public. In order to provide such service, MMHA shall:

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing in good repair, in compliance with program uniform physical condition standards – for very low- and low-income families.
- Achieve a healthy mix of incomes in its public housing developments by attracting and retaining higher income families and by working toward de-concentration of poverty goals.
- Encourage self-sufficiency of participant families.
- Promote fair housing and the opportunity for very low- and low-income families of all races, ethnicities, national origins, religions, ethnic backgrounds, and with all types of disabilities, to participate in the public housing program and its services.
- Create positive public awareness and expand the level of family and community support in accomplishing MMHA’s mission.
- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.

Administer an efficient, high-performing agency through continuous improvement of the PHA’s support systems and commitment to our employees and their development.

The PHA will make every effort to keep residents informed of program rules and regulations, and to advise participants of how the program rules affect them.

## **PART II: THE PUBLIC HOUSING PROGRAM**

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

The United States Housing Act of 1937 (the “Act”) is responsible for the birth of federal housing program initiatives, known as public housing. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing for low-income residents. There have been many changes to the program since its inception in 1937. The Housing Act of 1965 established the availability of federal assistance, administered through local public agencies, to provide rehabilitation grants for home repairs and rehabilitation. This act also created the federal Department of Housing and Urban Development (HUD). The Housing Act of 1969 created an operating subsidy for the public

housing program for the first time. Until that time, public housing was a self-sustaining program. In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act or Housing Act of 1998 – was signed into law. Its purpose was to provide more private sector management guidelines to the public housing program and provide residents with greater choices. It also allowed PHAs more remedies to replace or revitalize severely distressed public housing developments. Highlights of the Reform Act include: the establishment of flat rents; the requirement for PHAs to develop five-year and annual plans; income targeting, a requirement that 40% of all new admissions in public housing during any given fiscal year be reserved for extremely low-income families; and resident self-sufficiency incentives

### **1-II.B. PUBLIC HOUSING PROGRAM BASICS**

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HUD writes and publishes regulations in order to implement public housing laws enacted by Congress. HUD contracts with the PHA to administer programs in accordance with HUD regulations and provides an operating subsidy to the PHA. The PHA must create written policies that are consistent with HUD regulations. Among these policies is the PHA's Admissions and Continued Occupancy Policy (ACOP). The ACOP must be approved by the board of commissioners of the PHA.

The job of the PHA pursuant to HUD regulations is to provide decent, safe, and sanitary housing, in good repair, to low-income families at an affordable rent. The PHA screens applicants for public housing and, if they are found eligible and accepted, the PHA offers the applicant a unit. If the applicant accepts the offer, the PHA will enter into a contract with the applicant known as the lease. At this point, the applicant becomes a tenant of the public housing program.

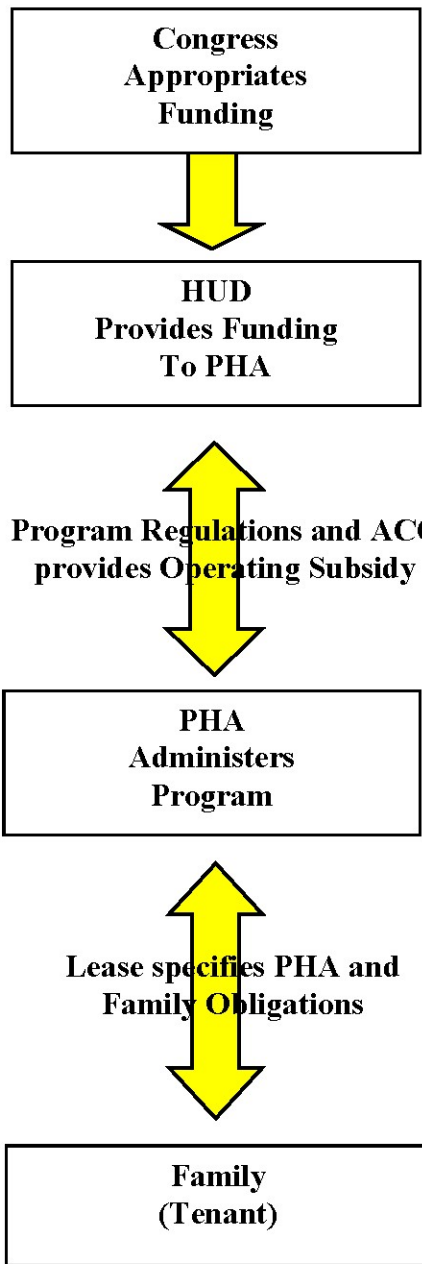
Since the PHA owns the public housing development, the PHA is the landlord. The PHA must comply with all of the legal and management responsibilities of a landlord in addition to administering the program in accordance with HUD regulations and PHA policy.

### **1-II.C. PUBLIC HOUSING PARTNERSHIPS**

Relationships between the important parties are defined by federal regulations and by contract. To administer the public housing program, the PHA enters into a contractual relationship with HUD through the ACC. The PHA also enters into a contractual relationship with the tenant through the public housing lease. These contracts outline the roles and responsibilities of each party.

Federal regulations further identify the important roles of the parties involved. For the program to work and be successful, all parties involved – HUD, the PHA, and the tenant – must play their important parts.

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



### **What does the PHA do?**

The PHA's responsibilities originate in federal regulations and the ACC. The PHA owns and manages public housing developments, administers the program under contract with HUD and has the following major responsibilities:

- Establish local policies
- Review applications from interested applicant families to determine whether applicants are eligible for the program
- Maintain waiting list and select families for admission
- Maintain housing units by making any necessary repairs in a timely manner
- Screen families who apply for tenancy, to determine if they will be good renters
- Offer units to families (minimize vacancies without overcrowding)
- Maintain properties to the standard of decent, safe, sanitary, and in good repair (including assuring compliance with uniform physical conditions standards)
- Make sure the PHA has adequate financial resources to maintain its housing stock
- Ensure that families continue to qualify under the program
- Collect rent due from the assisted family and comply with and enforce provisions of the lease
- Ensure that families comply with program rules
- Provide families with prompt and professional service
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the PHA's ACOP, and other applicable federal, state and local laws.

### **What does the Tenant do?**

The tenant's responsibilities are articulated in the public housing lease. The tenant has the following broad responsibilities:

- Comply with the terms of the lease
- Provide the PHA with complete and accurate information, determined by the PHA to be necessary for administration of the program
- Cooperate in attending all appointments scheduled by the PHA
- Allow the PHA to inspect the unit at reasonable times and after reasonable notice
- Take responsibility for care of the housing unit, including any violations of uniform physical condition standards caused by the family
- Not engage in drug-related or violent criminal activity
- Notify the PHA before moving or termination of the lease
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit or assign the lease

- Promptly notify the PHA of any changes in family composition
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

If all parties fulfill their obligations in a professional and timely manner, the program responsibilities will be fulfilled in an effective manner.

## **1-II.D. APPLICABLE REGULATIONS**

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 902: Public Housing Assessment System
- 24 CFR Part 903: Public Housing Agency Plans
- 24 CFR Part 945: Designated Housing
- 24 CFR Part 960: Admission and Occupancy Policies
- 24 CFR Part 965: PHA-Owned or Leased Projects – General Provisions
- 24 CFR Part 966: Lease and Grievance Procedures

## **PART III: THE ADMISSIONS AND CONTINUED OCCUPANCY POLICIES**

### **1-III.A. OVERVIEW AND PURPOSE OF THE POLICY**

The ACOP is the MMHA’s written statement of policies used to carry out the housing program in accordance with federal law and regulations, and HUD requirements. The ACOP is required by HUD and it must be available for public review [CFR 24 Part 903]. The ACOP also contains policies that support the objectives contained in the PHA’s Agency Plan.

All issues related to public housing not addressed in this ACOP are governed by federal regulations, HUD handbooks and guidebooks, notices and applicable state and local laws. The policies in this ACOP have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding. The PHA is responsible for complying with all changes in HUD regulations pertaining to public housing. If such changes conflict with this plan, HUD regulations will have precedence.

### **1-III.B. CONTENTS OF THE POLICY**

- The organization of the waiting list and how families are selected and offered available units, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list (Chapters 4 and 5)
- Transfer policies and the circumstances under which a transfer would take precedence over an admission (Chapter 12)

- Standards for determining eligibility, suitability for tenancy, and the size and type of the unit needed (Chapters 3 and 5)
- Procedures for verifying the information the family has provided (Chapter 7)
- The method for achieving de-concentration of poverty and income-mixing of public housing developments (Chapter 4)
- Grievance procedures (Chapter 14)
- Policies concerning payment by a family to the PHA of amounts the family owes the PHA (Chapter 15 and 16)
- Interim redeterminations of family income and composition (Chapter 9)
- Policies regarding community service requirements; (Chapter 11)
- Policies and rules about safety and ownership of pets in public housing (Chapter 10).

HUD expects PHAs to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies the PHA has adopted. The PHA's Admissions and Continued Occupancy Policy is the document that contains and clarifies PHA policy.

### **1-III.C. UPDATING AND REVISING THE POLICY**

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

#### PHA Policy

The PHA will review and update the ACOP at least once a year, and more often if needed, to reflect changes in regulations, PHA operations, or when needed to ensure staff consistency in operation.



**Exhibit 1-1 MMHA Sites, Buildings, Units, Bedrooms**

Total Units: 127

Site	Buildings	Building ID	# of Units	Bedroom Size
Morris House (62-3) 1 W. Franklin St. (Troy) 37 Units Elderly Designated	1 4 story plus basement	N/A 105/101/207/ 307/ 407	5 32	0 Bedroom 1 Bedroom
Floral View (62-4) 1201 Long St. (Troy) 50 units Family	14 5 Houses 1 Community 8 Townhouses	Community Building 2 3 4 5 6 7 8 9 10 11 12 13 14	N/A 1 1 6 7 6 6 4 6 4 6 1 1 1	4 Bedroom 3 Bedroom 2 Bedroom 2 Bedroom 2 Bedroom 2 Bedroom 2 Bedroom 2 Bedroom 2 Bedroom 2 Bedroom 3 Bedroom 3 Bedroom 3 Bedroom
Washington Commons (62-5) 950 McKinley Ave. (Piqua) 40 units Family	13 5 Houses 1 Row 6 Townhouses 1 Community	Community Bldg. 1 2 3 4 5 6 7 8 9 10 11 12	N/A 5 6 2 2 1 1 1 1 1 4 4 6 6	1 Bedroom 2 Bedroom 2 Bedroom 2 Bedroom 3 Bedroom 4 Bedroom 4 Bedroom 4 Bedroom 4 Bedroom 4 Bedroom 3 Bedroom 3 Bedroom 2 Bedroom 2 Bedroom
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# CHAPTER 2

## Fair Housing – Equal Opportunity – Violence Against Women Act

## Chapter 2

### FAIR HOUSING AND EQUAL OPPORTUNITY

#### PART I: NONDISCRIMINATION

##### 2-I.A. OVERVIEW

Federal laws require PHAs to treat all applicants and tenant families equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. 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)
- Violence Against Women Reauthorization Act of 2005 (VAWA) (*see Exhibit 2-2 at end of section for handout on VAWA*)
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

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

##### 2-I.B. NONDISCRIMINATION

The PHA shall not discriminate because of race, color, sex, religion, familial status, marital status, age, disability, veteran or military status, sexual orientation, genetic info, gender identity 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 use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the public housing program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment

- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or tenant toward or away from a particular area based on any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class

### **MMHA Policy: Violence Against Women Act (VAWA)**

#### Policy:

1. It shall be the policy of the Authority to protect victims of domestic violence, stalking, sexual assault, and dating violence as defined below by not denying or terminating assistance to victims, provided;
  - a. Victim status is confirmed
  - b. The perpetrator is barred from the family or premises
  - c. The victim complies with all other terms and conditions of the lease and/or family responsibilities.

#### Implementation

1. The policy shall be made part of the Voucher Briefing Packet and Public Housing Orientation packet.
2. A family or person claiming victim status shall complete the Certification Form (See Exhibit 2-6).

### **Providing Information to Families**

The PHA must take steps to ensure that families are fully aware of all applicable civil rights laws. As part of the public housing orientation process, the PHA will provide information to public housing applicant families about civil rights requirements.

### **Discrimination Complaints**

#### MMHA Policy

Applicants or tenant families who believe that they have been subject to unlawful discrimination may notify the PHA in writing.

The PHA will attempt to remedy discrimination complaints made against the PHA.

The PHA will provide a copy of a discrimination complaint form to the complainant and provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

## **PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES**

### **2-II.A. OVERVIEW**

The PHA must ensure that persons with disabilities have full access to the PHA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the public housing program [24 CFR 8].

The PHA must provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy [24 CFR 966.7(b)].

#### PHA Policy

The Housing Application filled out by potential tenants provides the tenants a section to indicate if they or anyone in their household have a disability or require a special unit or accommodations. (*See Exhibit 2-3 at end of section 2*)

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

A "reasonable accommodation" is a change, exception, or adjustment to a policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

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 it is reasonable (see definition above and Section 2-II.E), the PHA shall accommodate the needs of a person with disabilities. Examples include but are not limited to:

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Permitting a higher utility allowance for the unit if a person with disabilities requires the use of specialized equipment related to the disability
- Modifying or altering a unit or physical system if such a modification or alteration is necessary to provide equal access to a person with a disability
- Installing a ramp into a dwelling or building
- Installing grab bars in a bathroom

- Installing visual fire alarms for hearing impaired persons
- Allowing a PHA-approved live-in aide to reside in the unit if that person is determined to be essential to the care of a person with disabilities, is not obligated for the support of the person with disabilities, and would not be otherwise living in the unit.
- Providing a designated handicapped-accessible parking space
- Allowing an assistance animal
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with PHA staff
- Displaying posters and other housing information in locations throughout the PHA's office in such a manner as to be easily readable from a wheelchair

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

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

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

If the need for the accommodation is not readily apparent or known to the PHA, the family must explain the relationship between the requested accommodation and the disability.

#### PHA Policy

The PHA will provide the family with a Reasonable Accommodation Verification form to make its request in writing (*See Exhibit 2-4 at end of section 2*). However, the PHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

### **2-II.D. VERIFICATION OF DISABILITY**

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

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

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

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

When verifying a disability, the PHA will follow the verification policies provided in Chapter 7 and provide the family with a Disability Verification form to have filled out by their medical care provider. *(See Exhibit 2-5 at end of Section 2)* All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16 (Program Administration). In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]
- The PHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The PHA may not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

#### **2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION** [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]

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 operations.

Requests for accommodations must be assessed on a case-by-case basis. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the PHA at the time of the request, the benefits that the accommodation would provide to the family, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, 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.

### PHA Policy

After a request for an accommodation is presented, the PHA will respond, in writing, within 10 business days.

If the PHA denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal the PHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

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

If the PHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the PHA will notify the family, in writing, of its determination within 10 business days from the date of the most recent discussion or communication with the family. The notice will inform the family of the right to appeal the PHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

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

HUD regulations require the PHA to take reasonable steps 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].

### MMHA Policy

The PHA will request and have available with advance notice an interpreter as needed for sign language interpretation; have material explained orally by staff; or have a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

## **2-II.G. PHYSICAL ACCESSIBILITY**

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

- PIH 2002-01 (HA), Accessibility Notice
- 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



resident families. They can be found in three key documents.

- This policy, the Admissions and Continued Occupancy Policy, describes the key policies that govern the PHA's responsibilities with regard to physical accessibility.
- Notice PIH 2002-01(HA) Accessibility Notice (which must be posted in the public housing offices in a conspicuous place) summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- 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 public housing program.

CURRENTLY DUE TO THE AGE OF THE BUILDING MMHA MEETS WITH CLIENTS IN THE LOWER LEVEL IF THEY ARE UNABLE TO CLIMB THE STAIRS TO THE MAIN OFFICE LEVEL.

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

A PHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 966.7].

When applicants with disabilities are denied assistance, the notice of denial must inform them of their right to request an informal hearing [24 CFR 960.208(a)].

When a family's lease is terminated, the notice of termination must inform the family of their right to request a hearing in accordance with the PHA's grievance process [24 CFR 966.4(1)(3)(ii)].

When reviewing reasonable accommodation requests, the PHA must consider whether reasonable accommodation will allow the family to 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 [24 CFR 966.7].

In addition, the PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing process [24 CFR 966.56(h)].

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

### **2-III.A. OVERVIEW**

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

LEP persons are defined as persons who do not speak English as their primary language and who

have a limited ability to read, write, speak or understand English. For the purposes of this Admissions and Continued Occupancy Policy, LEP persons are public housing applicants and resident families, and parents and family members of applicants and resident families.

### **2-III.B. ORAL INTERPRETATION**

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, the PHA will generally offer, or ensure that the family is offered through other sources, competent interpretation services free of charge to the LEP person.

#### MMHA Policy

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

Where feasible, the PHA will pool resources with other PHAs, and will standardize documents.

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

### **2-III.C. IMPLEMENTATION PLAN**

#### MMHA Policy

It is determined that the PHA serves very few LEP persons (less than 5% of the applicants). The MMHA will make reasonable accommodations and provide a translator when necessary and previously requested. The MMHA will continue to review the need for additional services on a yearly basis or more often if there is an increase of LEP applicants.

## **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 live activities.

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

The definition of a person with disabilities does not include:

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

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

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

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

Insert Exhibit 2-2 (page 1)

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# CHAPTER 3

## Eligibility



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

### **3-I.A. OVERVIEW**

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

### **3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.403 and HUD-50058 IB, p. 13]**

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

#### **Family**

To be eligible for admission, an applicant must qualify as a family. A family may be a single person or a group of persons. *Family* as defined by HUD includes a family with a child or children, two or more elderly or disabled persons living together, one or more elderly or disabled persons living with one or more live-in aides, or a single person. The PHA has the discretion to determine if any other group of persons qualifies as a family.

#### MMHA Policy

A family is two or more persons related by blood, marriage, or operation of law, or a household consisting of persons who wish to occupy the unit and share expenses for the family; Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes (revised 7/26/2007).

#### **Household**

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

### **3-I.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY**

#### **Remaining Members**

#### MMHA Policy

If a family breaks up, it is the Authority's decision who will continue to receive assistance but only one of the parties shall continue to receive assistance. The Authority shall take into account court determinations, children custody arrangements, domestic violence or criminal issues, etc. The other family members may apply for assistance through the normal process.

A remaining member of a family is one who has signed the lease and continues to live in a unit after all other family members have left. A remaining member shall be allowed to remain in the unit until the next annual redetermination if:

- a. If still eligible and suitable the remaining member may be allowed to remain in a suitable unit.

- b. The authority reserves the right to determine whether or not a lease can be entered into and whether or not the remaining member is suitable and has the ability to uphold the lease.
- c. Live-in Aides are not remaining members.

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

*Head of household* means the adult member of the family who is considered the head for purposes of determining income eligibility and rent.

#### PHA Policy

An adult family member, designated by the family, to be responsible for ensuring the family fulfills its obligations under the program.

### **3-I.E. 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.

#### PHA Policy

The term “spouse” does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

A *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.

#### PHA Policy

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 only have one 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 [HUD-50058 IB, p. 14].

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

A *dependent* is a member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age or is a disabled person or handicapped person, or is a full time student (5.603)

#### **Joint Custody of Dependents**

#### PHA Policy

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

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

### **3-I.G. FULL-TIME STUDENT [24 CFR 5.603]**

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

#### **Student Restrictions:**

A dependent student is not eligible for assistance and must be denied or terminated from assistance UNLESS their total family is income eligible in the jurisdiction where the parents live.

#### **Applicability:**

A **Dependent** student is one who is:

- a. Enrolled in an institution of higher education
- b. Under 24 years of age
- c. Not a veteran
- d. Not married
- e. No dependent children
- f. Counted on parents tax return (last return)

In calculating income you must include all financial assistance income (except loans) in excess of tuition including parent's income.

An **Independent** student is one who is:

- a. At least 24 years of age
- b. Has a dependent (except spouse), or be a ward of the court, or orphan
- c. Is a veteran
- d. Not included on parents tax return
- e. Is married

Process these normally for determining eligibility, including income inclusions and exclusions.

#### **Procedure:**

1. Determine which category a student falls within.
2. Process accordingly
3. Verify status by:
  - a. Parents tax return
  - b. Usual income procedure
  - c. Review address with school

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

The Morris House has been designated for elderly and near elderly (7/18/1996). The waiting list for the Morris House shall only contain elderly (over 62) and near elderly (50-61). The elderly shall be taken first and if there are no elderly, then the near elderly may be taken.

#### **Elderly Persons**

An *elderly person* is a person who is at least 62 years of age [24 CFR 5.100].

#### **Near-Elderly Persons**

A *near-elderly person* is a person who is 50-61 years of age [24 CFR 945.105]. This may also include 2 persons 50 years of age or older living together or one or more persons 50 or older with live-in aide.

#### **Elderly Family**

An *elderly family* shall be one whose head or spouse is 62 years of age or older; includes 2 or more elderly persons living together; includes 1 or more elderly persons with a live-in aide.

### **3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403]**

Non-elderly with disabilities shall be placed on the Washington Commons waiting list as there are four disability units in a row type setting in a family development.

#### **Persons with Disabilities**

Under the public housing 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 chapter.

#### **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 special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the PHA from denying admission for reasons related to alcohol and drug abuse following policies found in Part III of this chapter, or from enforcing the lease following the policies in Chapter 13.

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

A *guest* is defined as a person temporarily staying in the unit with the consent of a tenant or other member of the household for less than 5 days with the consent of the Authority. The same guest can remain in the assisted unit no longer than five (5) consecutive days during any 12 month period. Guests must be reported in writing to the Authority. The Authority may grant extended stays for good cause and provided the guest can provide proof of permanent residency elsewhere.

The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near PHA premises [24 CFR 966.4(f)].

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

Former residents who have been evicted are not permitted as overnight guests.

Guests who represent the unit address as their residence address for receipt of benefits or other purposes will be considered unauthorized occupants. In addition, guests who remain in the unit beyond the allowable time limit will be considered unauthorized occupants, and their presence constitutes violation of the lease.

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

*Foster adults* are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609(c)(2)].

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

Foster children and foster adults that are living with an applicant or resident family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603 and HUD-50058 IB, pp. 13-14].

#### PHA Policy

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

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

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

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

#### **Definitions of Temporarily and Permanently Absent**

#### PHA Policy

All extended absenteeism (over 5 days), either by the family or by individual member of the family, from the unit must be reported. The family must report extended absenteeism from the unit in writing, preferably before but not later than 5 days of occurrence and the purpose of the absence.

A temporary absence shall be any absence for less than the following:

Imprisonment- 60 days

Vacation Purpose:

Over 62:- 90 days

Under 62: 30 days

Hospital/Nursing- 180 days

Students, military personnel and temporary foster care placement are excluded from the above policy.

Persons absent over these time periods shall be considered permanently absent requiring re-determination of the family and benefits.

Permanently absent members shall be documented by: Third-party verification; Self-attestation if absent for over one year (missing/abandon/etc.)

### **Absences Due to Placement in Foster Care [24 CFR 5.403]**

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

#### PHA Policy

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

### **Individuals Confined for Medical Reasons**

#### PHA Policy

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member.

If there is a question about the status of a family member, 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.

### **Return of Permanently Absent Family Members**

#### PHA Policy

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

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

*Live-in aide* means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and

well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

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 a family member with disabilities.

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR 5.609(c)(5)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

#### PHA Policy

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

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

The PHA has the discretion not to approve a particular person as a live-in aide, and may withdraw such approval, if [24 CFR 966.4(d)(3)(i)]:

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

The person has a history of drug-related criminal activity or violent criminal activity; or

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

Within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request, the PHA will notify the family of its decision in writing.

The effects of a live-in aide are:

1. Counted for bedroom size
2. Income is excluded from rent calculation

## PART II: BASIC ELIGIBILITY CRITERIA

### 3-II.A. INCOME ELIGIBILITY AND TARGETING

#### Types of Low-Income Families [24 CFR 5.603(b)]

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

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

*Extremely low-income family.* A family whose annual income does not exceed 30 percent of the median income for the area, adjusted for family size.

HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

#### Using Income Limits for Eligibility [24 CFR 960.201]

Income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be a *low-income* family.

#### Using Income Limits for Targeting [24 CFR 960.202(b)]

At least 40 percent of the families admitted to the PHA's public housing program during a PHA fiscal year from the PHA waiting list must be *extremely low-income* families. This is called the "basic targeting requirement".

If admissions of extremely low-income families to the PHA's housing choice voucher program during a PHA fiscal year exceed the 75 percent minimum targeting requirement for that program, such excess shall be credited against the PHA's public housing basic targeting requirement for the same fiscal year.

The fiscal year credit for housing choice voucher program admissions that exceed the minimum voucher program targeting requirement must not exceed the lower of:

- Ten percent of public housing waiting list admissions during the PHA fiscal year
- Ten percent of waiting list admission to the PHA's housing choice voucher program during the PHA fiscal year
- The number of qualifying low-income families who commence occupancy during the fiscal year of public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

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

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



All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply.

### **Declaration [24 CFR 5.508]**

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

### ***MMHA Policy:***

#### **Citizenship Verification**

1. Citizenship status needs to be verified only once;
2. For citizens self-declaration for is sufficient:
  - a. Written and signed under penalty of perjury;
  - b. All adults must sign;
  - c. The responsible adult may sign for children;
3. For non-citizen participants as of 6/19/1995 over 62 years of age, verification consists of:
  - a. Signed declaration form;
  - b. Proof of age
4. For other non-citizens, verification consists of: (See Citizenship Overview)
  - a. Signed declaration form of eligible immigrant status; and
  - b. INS Documents
    1. Must provide original
    2. May be one of these:
      - a. Alien Registration Card (I551 or I551); or
      - b. Arrival-Departure Record (I94); or
      - c. Temporary Resident Card (I688); or
      - d. Employment Authorization Card (I688-B); or
      - e. INS Receipt for replacement of above; or
      - f. Other (To be published in Federal Register) ( See I-9 Form for employment)
  - c. Signed verification release form;
    1. Primary Verification, Automatic system verification (INS-SAVE)
    2. Secondary:

If SAVE fails, send for manual search. Must be done within ten (10) days of SAVE notification.

      - a. Photocopy of INS documents
      - b. INS Form G-845S
    3. INS, District Office

#### ***Ineligible Noncitizens***

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family 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 admission as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 14 for a discussion of informal hearing procedures.

### **Ineligible Families [24 CFR 5.514(d), (e), and (f)]**

#### PHA Policy

The PHA will not provide assistance to a family before the verification of at least one family member as a citizen, national, or eligible noncitizen.

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

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

Informal hearing procedures are contained in Chapter 14.

### **Timeframe for Determination of Citizenship Status [24 CFR 5.508(g)]**

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

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

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

#### PHA Policy

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

### **3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218]**

The applicant and all members of the applicant's household must provide documentation of a valid Social Security Number (SSN) or a certification stating that no SSN has been issued. If a household member who is required to execute a certification is less than 18 years old, the certification must be executed by the individual's parent or guardian [24 CFR 5.216(j)].

Assistance cannot be provided to a family until all SSN documentation requirements are met.

Persons who disclose their Social Security Number but cannot provide verification, must sign a certification and provide verification within 90 days. Individuals exempt from disclosure are individuals who do not contend to have eligible immigration status, tenants who are 62 years of age or older as of January 31, 2010 and tenants who have previously disclosed a valid Social Security Number.

For an applicant only, if a child under the age of 6 who was added to the household within the 6 month period prior to the household's date of admission, the applicant may become a participant so long as they furnish acceptable proof of a Social Security Number for the child within 90 calendar days from the date of admission. An extension of one 90 day period must be granted if the PHA determines, in its discretion, the applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the applicant. Failure to produce verification of the Social Security Number within the required time period is grounds for denial or termination of assistance.

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

Current residents who had not previously disclosed a social security number, and who were at least 62 years old on January 31, 2010. The exemption applies at all future reexaminations, and continues if the individual transfers to a new unit or receives another form of housing assistance.

Several forms of documentation are now acceptable. For each household member, the applicant or resident family may provide any of the following:

- An original social security card issued by the Social Security Administration.
- Documentation issued by the Social Security Administration that contains the name and SSN of the individual (e.g., a benefit award letter, Medicare card, or printout).
- An original document showing the individual's name and social security number, issued by a federal, state or local government agency. This could include welfare agency documents, military papers, unemployment insurance documents, or any other government-issued documentation. 24 CFR 5.216(i); Notice PIH 2012-10

Since social security numbers for all household members are now matched against SSA records through HUD's automated systems, the PHA must generally accept any of the documents listed above. The PHA may only reject documents which:

- Are not original
- Appear to be forged, or
- Appear to be altered, mutilated, or not legible.

If the PHA rejects the family's documentation, the PHA should explain why the documents were not acceptable. The PHA should then request acceptable documentation within a specified time frame. *Notice PIH 2012-10*

The PHA verifies the SSN by making a copy of the original documentation submitted, returning it to the individual, and retaining the copy in the family's file. In addition, the PHA records the SSN on line 3n of form HUD-50058 and transmitting the form to HUD in a timely manner.

PHAs are required to submit the form no later than 30 calendar days of receiving the SSN documentation to enable HUD to initiate its computer matching efforts for current program participants. Notice PIH 2012-10

HUD allows PHAs, at their discretion, to remove and destroy social security number documentation from the file once the number has been validated through the EIV system. The EIV printout will be considered adequate to verify the social security number. Doing so minimizes the risk of exposing the individual's SSN.

### **3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230]**

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

The PHA must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow the PHA to obtain information that the PHA has determined is necessary in administration of the public housing program [24 CFR 960.259(a) and (b)].

## **PART III: DENIAL OF ADMISSION**

### **3-III.A. OVERVIEW**

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied admission.

In addition, HUD requires or permits the PHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. The PHA's authority in this area is limited by the Violence against Women Reauthorization Act of 2005 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, or stalking.

### **3-III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204]**

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

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits but does not require the PHA to admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).
- The PHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].
- The PHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. In determining reasonable cause, the PHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. The PHA will also consider evidence from treatment providers or community based organizations providing services to household members.
- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing, the family will be denied admission.
- If any household member is currently registered as a sex offender under a State registration requirement, the family will be denied admission.

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

#### **Criminal Activity [24 CFR 960.203 (b) and (c)]**

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

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

Criminal activity that may threaten the health, safety, or welfare of other tenants [24 CFR 960.203(c)(3)].

Criminal activity that may threaten the health or safety of PHA staff, contractors, subcontractors, or agents.

Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

## **MMHA Standard Operating Procedure states:**

### **Applicants**

1. It shall be the policy of the Authority to deny admission to applicants who pose or have posed a threat to the life, health, safety or peaceful enjoyment of other residents, neighbors, or employees of the Authority due to illegal drug activity, alcohol abuse and/or criminal activity.
2. The applicant is entitled to a copy of the records and an opportunity for an Informal Review.
3. Persons evicted from Public Housing for the above and within the last 3 years from the date of eviction shall be denied Section 8 assistance.

### **Program Participants**

1. It shall be the policy of the Authority to terminate assistance to program participants who threaten the life, health, safety or peaceful enjoyment of other residents, neighbors, or employees of the Authority either directly or through the actions of their family members, guests, or other persons visiting the participant or family members by any such person engaging in illegal drug activity, alcohol abuse and/or criminal activity on or off the premises of the participant.
2. Such violations shall be considered a serious and material violation of the Lease and/or family responsibilities and be subject to emergency termination procedures.
3. The Authority reserves the right, at its sole discretion, to address the foregoing behavior by initiating direct criminal and/or civil legal action, thereby bypassing the existing grievance procedure.

### **Considerations**

In determining whether to approve an applicant, to terminate a participant, to pursue direct legal action and/or to initiate the grievance procedure, the Authority may consider the following:

1. The participant and/or family member has successfully completed a rehabilitation program; or
2. The circumstances establishing grounds for termination or other action no longer exist and will likely not re-occur; or
3. The participant or family member is participating in a rehabilitation program and eventually successfully completes such program.

### **Related Items:**

1. Evidence need not involve arrest or conviction, only a preponderance of evidence or reasonable cause indicating the activity occurred.
2. Information received and records shall be kept confidential.
3. Persons with Drug/Alcohol Abuse/ Criminal activity shall not necessarily be treated as persons with disabilities.

### **Procedures**

1. Upon receipt of information from any source (newspaper/neighbors, etc.), investigate the situation to determine if activity occurred.

2. Document as fully as possible:
  - a. Secure police reports;
  - b. Secure police history for pattern of abuse (i.e. history)
3. If there is reasonable causes that the activity occurred deny or terminate assistance.
4. Send cancel letters to follow normal procedures for the programs involved and right to a hearing:

Public Housing Grievance Policy  
Section 8 Termination and Hearing Policy

Further MMHA policy states:

Background:

1. HUD prohibits “Sexual Predators,” i.e. lifetime designation by courts- from public assistance.
2. ORC separates offenses into three categories:
  - a. “Oriented Offenders”- must register, no notification; expires in 10 years (indiscretions).
  - b. “Habitual Offenders”- must register; notification at discretion of court; 20 year limitation.
  - c. “Sexual Predator” – subject to registration (every 90 days); notification for lifetime; notification within 1000 feet.
3. After conviction and in separate hearing, the court orders a classification assessing risk. First a person is tried in court under criminal terms. Then a classification hearing is held.
4. Term of sentence runs out, record is cleared.

Guidelines

1. HUD prohibits assistance to the Predator classification in all programs.
2. A sexual offense is a criminal offense.
3. It shall be the policy of the Authority to deny admission or terminate assistance for anyone labeled with a criminal offense and to offer a hearing to determine if mitigating circumstances exist. In other words, treat as a criminal offense.
4. Once the designation is dropped, an offender is eligible for all programs.
5. The Agency uses the National Sex Offender Database to check all potential applicants upon selection from the waiting list.

Charted

Class	Restrictions	MMHA Policy
1. Tier 3	Lifetime	Prohibited s/8 & PH
2. Tier 2	20 years	Case by Case s/8 Prohibit PH
3. Tier 1	10 years	Case by Case No prohibition

**Procedure:**

1. Check internet of all applicants for Sexual Offenders registration status (different from criminal checks).
2. Cancel person with a classification of “Oriented Offender” and offer a hearing to provide for mitigating circumstances.

**Previous Behavior [960.203(c) and (d) and PH Occ GB, p. 48]**

**MMHA Policy**

The MMHA will deny admission to an applicant family based upon the following:

1. If any member of the family has ever been evicted from Public Housing.
2. If any member of the family has ever been terminated for assistance under the federally subsidized programs (Voucher, Certificate, Mod. Rehab, or private sector subsidized housing).
3. If any member of the family commits a drug-related or violent criminal activity, or is labeled by the courts as a “Sexual Predator.”
4. If any member of the family commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing programs, including unauthorized person violations.
5. If any member of the family currently owes an authority monies.
6. If any member of the family poses a threat to the life, health, safety or peaceful enjoyment of other residents, neighbors, or employees of the Authority due to illegal drug activity, alcohol abuse and/or criminal activity.

**Further factors to be considered in determining suit-ability should include, but not be limited to:**

1. Past payment history of rent and utilities;
2. Past caring for rental unit and premises (i.e. housekeeping habits/childcare);
3. Past respecting the rights of others to peacefully enjoy premises;
4. Past involvement or awareness of drug or related criminal activity that threatens the life or safety of persons or property, including a person labeled by the courts as a “Habitual Sexual Offender.”
5. Past compliance with terms of the lease.

In determining suitability the benefit of the doubt shall be given to the site, not the applicant.

1. Suitability shall be determined over the past three years.



2. Suitability shall include current behavior that includes but is not limited to:
  - a. Keeping appointments;
  - b. Supply requested documents in a timely fashion.
  - c. Completeness and accuracy of application.

Procedure:

Information on the application shall be reviewed and all items verified; the Landlord Reference form shall be sent to previous landlords; home visits and/or visits to neighbors may be made to verify and to observe housekeeping, child care and disturbance habits. (See 3-2 Home Visit Report)

The applicant shall be given the right to respond to negative reports through written comments and if determined unsuitable, the applicant has the right to a hearing.

No family shall be given a preference in any form if the family was evicted from any federal housing program during the last three years (from date of eviction) due to drug related criminal activity.

A family or family member convicted of producing amphetamine (speed) on the premises shall be permanent denied housing.

### **3-III.D. SCREENING**

#### **Screening for Eligibility**

PHAs are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the public housing 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].

The PHA may not pass along to the applicant the costs of a criminal records check [24 CFR 960.204(d)].

#### PHA Policy

The PHA will perform criminal background checks through local law enforcement for all adult household members.

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

PHAs are required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 960.204(a)(4)].

If the PHA proposes to deny admission 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)].

***Obtaining Information from Drug Treatment Facilities [24 CFR 960.205]***

HUD authorizes PHAs to request and obtain information from drug abuse treatment facilities concerning applicants. Specifically, the PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head, spouse, or cohead regardless of age, one or more consent forms signed by such household members that requests any drug abuse treatment facility to inform the PHA whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use.

*Drug Abuse Treatment Facility* means an entity that holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use, and is either an identified unit within a general care facility, or an entity other than a general medical care facility.

*Currently engaging in illegal use of a drug* means illegal use of a drug that occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

Any consent form used for the purpose of obtaining information from a drug abuse treatment facility to determine whether a household member is currently engaging in illegal drug use must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

Any charges incurred by the PHA for information provided from a drug abuse treatment facility may not be passed on to the applicant or tenant.

**PHA Policy:**

The PHA chooses not to obtain information from drug abuse treatment facilities to determine whether any applicant family's household members are currently engaging in illegal drug activity.

**Screening for Suitability as a Tenant [24 CFR 960.203(c)]**

The PHA is responsible for the screening and selection of families to occupy public housing units. The PHA may consider all relevant information. Screening is important to public housing communities and program integrity, and to ensure that assisted housing is provided to those families that will adhere to lease obligations.

PHA Policy

The PHA will consider the family's history with respect to the following factors:

Payment of rent and utilities

Caring for a unit and premises

Respecting the rights of other residents to the peaceful enjoyment of their housing

Criminal activity that is a threat to the health, safety, or property of others

Behavior of all household members as related to the grounds for denial as detailed in Sections 3-III. B and C

Compliance with any other essential conditions of tenancy

### **Resources Used to Check Applicant Suitability [PH Occ GB, pp. 47-56]**

PHAs have a variety of resources available to them for determination of the suitability of applicants. Generally, PHAs should reject applicants who have recent behavior that would warrant lease termination for a public housing resident.

#### PHA Policy

In order to determine the suitability of applicants the PHA will examine applicant history for the past three years. Such background checks will include:

#### *Past Performance in Meeting Financial Obligations, Especially Rent*

PHA and landlord references for the past three years, gathering information about past performance meeting rental obligations such as rent payment record, late payment record, whether the PHA/landlord ever began or completed lease termination for non-payment, and whether utilities were ever disconnected in the unit. PHAs and landlords will be asked if they would rent to the applicant family again.

Utility company references covering the monthly amount of utilities, late payment, disconnection, return of a utility deposit and whether the applicant can get utilities turned on in his/her name. (Use of this inquiry will be reserved for applicants applying for units where there are tenant-paid utilities.)

If an applicant has no rental payment history the PHA will check court records of eviction actions and other financial judgments, and credit reports. A lack of credit history will not disqualify someone from becoming a public housing resident, but a poor credit rating may.

Applicants with no rental payment history will also be asked to provide the PHA with personal references. The references will be requested to complete a verification of the applicant's ability to pay rent if no other documentation of ability to meet financial obligations is available. The applicant will also be required to complete a checklist documenting their ability to meet financial obligations.

If previous landlords or the utility company do not respond to requests from the PHA, the applicant may provide other documentation that demonstrates their ability to meet financial obligations (e.g. rent receipts, cancelled checks, etc.)

#### *Disturbances of Neighbors, Destruction of Property or Living or Housekeeping Habits at Prior Residences that May Adversely Affect Health, Safety, or Welfare of Other Tenants, or Cause Damage to the Unit or the Development*

PHA and landlord references for the past three years, gathering information on whether the applicant kept a unit clean, safe and sanitary; whether they violated health or safety codes; whether any damage was done by the applicant to a current or previous unit or the development, and, if so, how much the repair of the damage cost; whether the applicant's housekeeping caused insect or rodent infestation; and whether the neighbors complained about the applicant or whether the police were ever called because of disturbances.

Police and court records within the past three years will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest or conviction.

A personal reference will be requested to complete a verification of the applicant's ability to care for the unit and avoid disturbing neighbors if no other documentation is available. In these cases, the applicant will also be required to complete a checklist documenting their ability to care for the unit and to avoid disturbing neighbors.

Home visits may be used to determine the applicant's ability to care for the unit.

### **3-III.E. CRITERIA FOR DECIDING TO DENY ADMISSION**

#### **Evidence**

##### PHA Policy

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

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

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

#### **Consideration of Circumstances [24 CFR 960.203(c)(3) and (d)]**

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

In the event the PHA receives unfavorable information with respect to an applicant, consideration must be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). In a manner consistent with its policies, PHAs may give consideration to factors which might indicate a reasonable probability of favorable future conduct.

#### PHA Policy

The PHA will consider the following factors prior to making its decision:

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

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

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

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs

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

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

**Removal of a Family Member's Name from the Application [24 CFR 960.203(c)(3)(i)]**

HUD permits PHAs to impose as a condition of admission, a requirement that family members who participated in or were culpable for an action or failure to act which warrants denial of admission, to not reside in the unit.

PHA Policy

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

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

**Reasonable Accommodation [PH Occ GB, pp. 58-60]**

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.

PHA Policy

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

**3-III.F. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING [Pub.L. 109-162]**

The Violence against Women Reauthorization Act of 2005 (VAWA) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking. Specifically, Section 607(2) of VAWA adds the following provision to Section 6 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the public housing program:

Every contract for contributions shall provide that MMHA, the public housing agency, shall not deny admission to the project to any applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking if the applicant otherwise qualifies for assistance or admission, and that nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

## Definitions

As used in VAWA:

- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- The term *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 *stalking* means:
  - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
  - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
  - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.
- The term *immediate family member* means, with respect to a person –
  - A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
  - Any other person living in the household of that person and related to that person by blood and marriage.

## Notification and Victim Documentation

### PHA Policy

The PHA acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history that would warrant denial under the PHA's policies. Therefore, if the PHA makes a determination to deny admission to an applicant family on the basis of an unfavorable history, the PHA will include in its notice of denial a statement of the protection against denial provided by VAWA and will offer the applicant the opportunity to provide documentation affirming that the cause of the unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, or stalking.

**The documentation must include two elements:**

A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking

**One of the following:**

A police or court record documenting the actual or threatened abuse

A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The applicant must submit the required documentation with her or his request for an informal hearing (see section 14-I.B) or must request an extension in writing at that time. If the applicant so requests, the PHA will grant an extension of 10 business days, and will postpone scheduling the applicant’s informal hearing until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant the PHA determines the family is eligible for assistance, no informal hearing will be scheduled and the PHA will proceed with admission of the applicant family.

**Perpetrator Removal or Documentation of Rehabilitation**

PHA Policy

In cases where an applicant family includes the perpetrator as well as the victim of domestic violence, dating violence, or stalking, the PHA will proceed as above but will require, in addition, either (a) that the perpetrator be removed from the applicant household and not reside in the public housing unit or (b) that the family provide documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment.

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

This additional documentation must be submitted within the same time frame as the documentation required above from the victim.

**PHA Confidentiality Requirements**

All information provided to the PHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared database nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

### **3-III.G. NOTICE OF ELIGIBILITY OR DENIAL**

The PHA will notify an applicant family of its final determination of eligibility in accordance with the policies in Section 4-III.E.

If a PHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before 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)].

#### **PHA Policy**

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

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

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



## EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

### Person with Disabilities [24 CFR 5.403]

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

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

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

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

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

- (A) IN GENERAL – The term *developmental disability* means a severe, chronic disability of an individual that-
- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - (ii) is manifested before the individual attains age 22;
  - (iii) is likely to continue indefinitely;
  - (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) self-care, (II) receptive and expressive language, (III) learning, (IV) mobility, (V) self-direction, (VI) capacity for independent living, (VII) economic self-sufficiency; and
  - (v) reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.
- (B) INFANTS AND YOUNG CHILDREN – An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

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

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

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

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

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

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

- (1) Physical or mental impairment includes:
  - (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine
  - (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
  - (c) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment

Exhibit 3-2

Exhibit 3-3

Exhibit 3-4

Exhibit 3-5

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Exhibit 3.6



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# CHAPTER 4

## APPLICATIONS, WAITING LIST & TENANT SELECTION

## Chapter 4

### APPLICATIONS, WAITING LIST AND TENANT SELECTION

#### PART I: THE APPLICATION PROCESS

##### 4-I.A. OVERVIEW

This part describes the policies that guide the PHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes the PHA's obligation to ensure the accessibility of the application process.

##### 4-I.B. APPLYING FOR ASSISTANCE

Any family that wishes to reside in public housing must apply for admission to the program [24 CFR 1.4(b)(2)(ii), 24 CFR 960.202(a)(2)(iv), and PH Occ GB, p. 68]. HUD permits the PHA to determine the format and content of its applications, as well how such applications will be made available to interested families and how applications will be accepted by the PHA.

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

The PHA must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard PHA application process.

##### **Disabled Populations [24 CFR 8; PH Occ GB, p. 68]**

The PHA must provide reasonable accommodation to the needs of individuals with disabilities. MMHA provides meetings in the lower level of the building for those individuals with disabilities that render them unable to meet on the main floor. Chapter 2 provides a full discussion of the PHA's policies related to providing reasonable accommodations for people with disabilities.

##### **Limited English Proficiency**

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

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

The PHA must review each completed application received and make a preliminary assessment of the family's eligibility. The PHA must place on the waiting list families for whom the list is open unless the PHA determines the family to be ineligible. Where the family is determined to be ineligible, the PHA must notify the family in writing [24 CFR 960.208(a); PH Occ GB, p. 41]. 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.

## **Ineligible for Placement on the Waiting List**

### PHA Policy

A family will not be placed on the waiting list if they have not fully completed their application and staff is unable to enter the necessary information in the computer. In this case they will be notified in writing their application has been deemed ineligible.

## **Eligible for Placement on the Waiting List**

### PHA Policy

All complete applications are placed on the waiting list and the applicant receives the top sheet associated with the application as proof of applying.

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

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

The PHA will assign families on the waiting list according to the bedroom size for which a family qualifies as established in its occupancy standards (see Chapter 5). Families may request to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines (as long as the unit is not overcrowded according to PHA standards and local codes). However, in these cases, the family must agree not to request a transfer unless they have a change in family size or composition.

## **PART II: MANAGING THE WAITING LIST**

### **4-II.A. OVERVIEW**

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

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

### **4-II.B. MMHA STANDARD OPERATING POLICY: WAITING LIST**

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

#### **I. Advertisement**

- A. As new units are available and/or as waiting lists are depleted, advertisements shall be made in all news media within the County announcing the availability of

units for occupancy. Announcements shall also be sent to minority organizations and social service agencies.

- B. All notices, advertisements, etc. shall carry the EO logo and the following statements:
- Equal Opportunity Program
  - Disabilities Accommodated
  - Drug-Free Workplace

## **II. Background**

### **A. Non Entitlement**

An applicant does not have any right or entitlement to be listed on the waiting list or to any particular place on the waiting list or be admitted to the program.

### **B. Non-Discrimination**

No person shall be discriminated against because of race, sex, color, religion, national origin, ancestry, disability, belief, age or familial status, nor in any way be excluded from participation in or be denied the benefits in connection with any program, component or activity funded and/or operated by the Miami Metropolitan Housing Authority.

- C. Applicants and/or participants do have the right to challenge the Authority's actions if a violation of constitutional or statutory occurs.

## **III. Application**

1. All persons applying for housing must complete an application form, including preference status data.
2. No person shall be denied the right to apply for housing.
3. Each application shall be dated with the time and date of receipt and recorded on the Application Log accordingly.
4. Applicants must report changes in their address and family composition as they occur.
5. No person shall be discriminated against because of race, sex, color, religion, national origin, ancestry, disability, belief, age or familial status, nor in any way be excluded from participation in or be denied the benefits in connection with any program, component or activity funded and/or operated by the Miami Metropolitan Housing Authority.
6. Applicants shall be required to furnish proof of their statements on the application form at the time their names come to the top of the waiting list or at the time of initial screening.
7. All statements of proof shall be documented and filed in the applicant's folder.
8. Insofar as possible, documentation shall be third party in nature and handled directly with the source.

#### **IV. Application Log/Waiting List**

1. The Application Log shall be kept by date and time of receipt of application (chronologically) and by unit size preferred (bedroom size).
2. The log shall contain the following information:
  - a. Date
  - b. Time
  - c. Name
  - d. Social Security Number
  - e. Minority
  - f. Residency
  - g. Female HH
  - h. Elderly
  - i. Disability
  - j. Local Preferences
  - k. Veteran Preference
  - l. Income Range
  - m. Special Feature Needed
  - n. Ineligible/Cancel (Date and reason)
  - o. Eligible/Selected (date, unit offered, status)
3. All Logs shall be community wide and divided by type of projects:  
Non-Elderly  
Elderly
4. Applicants may choose which waiting list (bedroom size) to be placed on, provided it is in accordance with the occupancy standards below:
  - a. The applicant's choice shall determine the placement on the bedroom size Waiting List that is desired;
  - b. No applicant may be placed on more than one list;
  - c. The applicant may request a change of bedroom size waiting list at any time, provided;
    1. They notify the Authority in writing, requesting a change;
    2. Their placement on the new bedroom size waiting list shall be according to their new date/time of placement on the new waiting list.
  - d. Once selected, the applicant may not request or receive a larger size unit while their original applicant status remains the same.
  - e. If a family size change at selection has not been reported and a family needs a different size unit, the family shall be placed at the bottom of the appropriate waiting list.

#### **V. Selection**

1. Selection shall be from the Applicant Log (waiting List) only and shall be on a first come, first served basis according to date and time of application and in accordance with their preference status.
2. Selection shall be taken in sequence from the Waiting Lists based on the availability of the type and size of the unit that is vacant.
3. Ineligible/ Cancel Applicants
  - a. An ineligible or cancelled applicant shall be notified in writing of their status and the basis for ineligibility.

- b. Unsuitable applicants are considered ineligible.
- c. The applicant shall be notified and given the right to the Informal Hearing procedure.
- 4. Eligible Applicants
  - a. An eligible applicant whose eligibility has been verified shall be notified of the appropriate date occupancy may occur and offered a unit.

**VI. Preferences**

**A. General**

- 1. Preferences shall be treated equally without ranking or weighted.
- 2. All preferences must be verified.

**B. Federal Preferences**

- Suspended 9/30/96, per Public Hearing 2/29/96
- Deleted per QHWR Act 98 & FR 2/18/99 & Notice 98-64

**C. Local Preferences (Public Housing 2/29/96)**

**Residency**

- 1. No Local Preference for selection.
- 2. Elderly and Near Elderly shall be given preference for the elderly designated project (Morris House) in this order: elderly first, then non-elderly.
- 3. Mobility Disabled shall be given preference for any mobility accessible unit;
- 4. If all other things are equal (date, time and preference status), then a preference shall be given to families of veterans and servicemen as defined in State Law (ORC 3735.42)

**D. Targeting/Deconcentration**

- 1. Families on the Waiting List may be skipped in order to assure 40% of the New Admissions are Extremely Low Income (ELI) (30% MI).
- 2. Families may be skipped on the Waiting List in order to deconcentrate developments and provide for income mixing in each development as vacancies occur.
- 3. If a disparity exists in the composition of a site, the next selected family shall fill the disparity at that site.

HUD directs that a family that applies to reside in public housing must be offered the opportunity to be placed on the waiting list for any tenant-based or project-based voucher or moderate rehabilitation program that the PHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs [24 CFR 982.205(a)(2)(i)].

PHA Policy

The PHA will not merge the public housing waiting list with the waiting list for any other program the PHA operates. Applicants are able to request to be placed on both the Public Housing waiting list and Section 8 waiting list at the time of application.

**4-II.C. OPENING AND CLOSING THE WAITING LIST**

**Closing the Waiting List**

PHA Policy

The MMHA's waiting list remains open and does not intend to close the waiting list to applicants at this time.

### **Reopening the Waiting List**

In the event the waiting list would be closed, it may be reopened at any time. If the waiting list needed to be re-opened the PHA should publish a notice in local newspapers ( Troy Daily News/ Piqua Daily Call) of general circulation, minority media, and other suitable media outlets that the PHA is reopening the waiting list. Such notice must comply with HUD fair housing requirements. The PHA should specify who may apply, and where and when applications will be received.

### **4-II.D. FAMILY OUTREACH [24 CFR 903.2(d); 24 CFR 903.7(a) and (b)]**

The PHA should conduct outreach as necessary to ensure that the PHA has a sufficient number of applicants on the waiting list to fill anticipated vacancies and to assure that the PHA is affirmatively furthering fair housing and complying with the Fair Housing Act.

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 units under the program. These efforts may include, as needed, any of the following activities:

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

#### PHA Policy

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

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

#### PHA Policy

While the family is on the waiting list, the family must inform the PHA of changes as they occur and no later than within 10 business days, of changes in family size or composition, preference status, or contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.



Changes in an applicant's circumstances while on the waiting list may affect the family's qualification for a particular bedroom size or entitlement to a preference. When an applicant reports a change that affects their placement on the waiting list, the waiting list will be updated accordingly.

#### **4-II.F. UPDATING THE WAITING LIST**

HUD requires the PHA to establish policies to use when removing applicant names from the waiting list [24 CFR 960.202(a)(2)(iv)].

##### **Purging the Waiting List**

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to the PHA's request for information or updates because of the family member's disability, the PHA must, upon the family's request, reinstate the applicant family to their former position on the waiting list as a reasonable accommodation [24 CFR 8.4(a), 24 CFR 100.204(a), and PH Occ GB, p. 39 and 40]. See Chapter 2 for further information regarding reasonable accommodations.

##### PHA Policy

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

##### **Removal from the Waiting List**

##### PHA Policy

The PHA will remove applicants from the waiting list if they have requested that their name be removed. In such cases no informal hearing is required.

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

If a family is removed from the waiting list because the PHA has determined the family is not eligible for admission, 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 hearing regarding the PHA's decision (see Chapter 14) [24 CFR 960.208(a)].

### **PART III: TENANT SELECTION**

#### **4-III.A. OVERVIEW**

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 960.206(e)(2)]. The PHA's policies must be posted any place where the PHA receives applications. The PHA must provide a copy of its tenant selection policies upon request to any applicant or tenant. The PHA may charge the family for providing a copy of its tenant selection policies [24 CFR 960.202(c)(2)].

### PHA Policy

When an applicant or resident family requests a copy of the PHA's tenant selection policies, the PHA will provide copies to them free of charge.

#### **4-III.B. 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.

#### **Local Preferences [24 CFR 960.206]**

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 960.206(a)].

### PHA Policy

The PHA will use the following local preference:

1. The waiting list for the Morris House shall contain only:  
Elderly, over 62 years of age;  
Near elderly, over 50 years of age
2. Elderly shall be taken first; if there are no elderly, then near elderly may be taken.
3. Non-Elderly with disabilities shall be placed on the one-bedroom list for Piqua.
4. In accordance with date and time of application, preference shall be given to the above at the appropriate site.
5. Mobility Disabled shall be given preference for any mobility accessible unit.
6. If all other things are equal (date, time, and preference status), then a preference shall be given to families of veterans or servicemen as defined in State Law (ORC3735.42.)

#### **Deconcentration of Poverty and Income-Mixing [24 CFR 903.1 and 903.2]**

Developments subject to the deconcentration requirement are referred to as 'covered developments' and include general occupancy (family) public housing developments.

#### ***Steps for Implementation [24 CFR 903.2(c)(1)]***

To implement the statutory requirement to deconcentrate poverty and provide for income mixing in covered developments, the PHA must comply with the following steps:

Step 1. The PHA must determine the average income of all families residing in all the PHA's covered developments. The PHA may use the median income, instead of average income, provided that the PHA includes a written explanation in its annual plan justifying the use of median income.

Step 2. The PHA must determine the average income (or median income, if median income was used in Step 1) of all families residing in each covered development. In determining average income for each development, the PHA has the option of adjusting its income analysis for unit size in accordance with procedures prescribed by HUD.

Step 3. The PHA must then determine whether each of its covered developments falls above, within, or below the established income range (EIR), which is from 85% to 115% of the average family income determined in Step 1. However, the upper limit must never be less than the income at which a family would be defined as an extremely low income family (30% of median income).

Step 4. The PHA with covered developments having average incomes outside the EIR must then determine whether or not these developments are consistent with its local goals and annual plan.

Step 5. Where the income profile for a covered development is not explained or justified in the annual plan submission, the PHA must include in its admission policy its specific policy to provide for deconcentration of poverty and income mixing.

A family has the sole discretion whether to accept an offer of a unit made under the PHA's deconcentration policy. The PHA must not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under the PHA's deconcentration policy [24 CFR 903.2(c)(4)].

If, at annual review, the average incomes at all general occupancy developments are within the EIR, the PHA will be considered to be in compliance with the deconcentration requirement and no further action is required.

#### PHA Policy

For developments outside the EIR the PHA will take the following actions to provide for deconcentration of poverty and income mixing:

Families may be skipped on the Waiting List in order to deconcentrate developments and provide for income mixing in each development as vacancies occur.

If a disparity exists in the composition of a site, the next selected family shall fill the disparity at that site.

### **4-III.C. NOTIFICATION OF SELECTION**

When the family has been selected from the waiting list, the PHA must notify the family.

#### PHA Policy

The PHA will notify the family by first class mail when it is selected from the waiting list.

The notice will inform the family of the following:

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

- Who is required to attend the interview

- Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation

- Documents that must be provided at the interview to document eligibility for a preference, if applicable

Other documents and information that should be brought to the interview

If a notification letter is returned to the PHA with no forwarding address, the family will be removed from the waiting list without further notice. Such failure to act on the part of the applicant prevents the PHA from making an eligibility determination; therefore no informal hearing will be offered.

#### **4-III.D. THE APPLICATION INTERVIEW**

HUD recommends that the PHA obtain the information and documentation needed to make an eligibility determination through a private interview. Being invited to attend an interview does not constitute admission to the program.

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability [24 CFR 8.4(a) and 24 CFR 100.204(a)].

##### PHA Policy

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

The head of household, spouse and all family members over 18 MUST be present at this appointment.

The interview will be conducted only if the head of household or spouse/cohead provides appropriate documentation of legal identity (Chapter 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained.

If the family is claiming a waiting list preference, the family must provide documentation to verify their eligibility for a preference (see Chapter 7). If the family is verified as eligible for the preference, the PHA will proceed with the interview. If the PHA determines the family is not eligible for the preference, the interview will not proceed and the family will be placed back on the waiting list according to the date and time of their application.

The family must provide the information necessary to establish the family's eligibility, including suitability, and to determine the appropriate amount of rent the family will pay. The family must also complete required forms, provide required signatures, and submit required documentation. If any materials are missing, the PHA will provide the family with a written list of items that must be submitted.

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

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

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

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. Applicants who fail to attend the scheduled interview without contacting the PHA to reschedule will be removed from the waiting list and ineligible to reapply for one year. Such failure to act on the part of the applicant prevents the PHA from making an eligibility determination, therefore the PHA will not offer an informal hearing.

#### **4-III.E. FINAL ELIGIBILITY DETERMINATION [24 CFR 960.208]**

The PHA must verify all information provided by the family (see Chapter 7). Based on verified information related to the eligibility requirements, including PHA suitability standards, the PHA must make a final determination of eligibility (see Chapter 3).

When a determination is made that a family is eligible and satisfies all requirements for admission, including tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined [24 CFR 960.208(b)].

##### PHA Policy

The PHA will notify a family first by telephone and then in writing if they are not able to be reached of their eligibility within 10 business days of the determination and will provide the approximate date of occupancy insofar as that date can be reasonably determined.

The PHA must promptly notify any family determined to be ineligible for admission of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination [24 CFR 960.208(a)].

##### PHA Policy

If the PHA determines that the family is ineligible, the PHA will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal hearing (see Chapter 14).

If the 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. See Section 3-III.G for the PHA's policy regarding such circumstances.

# CHAPTER 5

## OCCUPANCY STANDARDS AND UNIT OFFERS

## Chapter 5

### OCCUPANCY STANDARDS AND UNIT OFFERS

#### PART I: OCCUPANCY STANDARDS

##### 5-I.A. OVERVIEW

Occupancy standards are established by the PHA to ensure that units are occupied by families of the appropriate size. This policy maintains the maximum usefulness of the units, while preserving them from excessive wear and tear or underutilization. Part I of this chapter explains the occupancy standards. These standards describe the methodology and factors the PHA will use to determine the size unit for which a family qualifies, and includes the identification of the minimum and maximum number of household members for each unit size. This part also identifies circumstances under which an exception to the occupancy standards may be approved.

##### 5-I.B. DETERMINING UNIT SIZE

In selecting a family to occupy a particular unit, the PHA may match characteristics of the family with the type of unit available, for example, number of bedrooms [24 CFR 960.206(c)].

Although the PHA does determine the size of unit the family qualifies for under the occupancy standards, the PHA does not determine who shares a bedroom/sleeping room.

The PHA's occupancy standards for determining unit size must be applied in a manner consistent with fair housing requirements.

##### PHA Policy

##### General:

1. Households will be offered units based on the type and size of units available and appropriate for the family.
2. Generally, the size shall involve the smallest number of rooms permitted.
3. The Authority will determine whether or not the type of unit is suitable.

##### Occupancy Standards:

1. The bedroom size shall not require more than two persons to occupy the same bedroom.

The PHA will reference the following standards in determining the appropriate unit bedroom size for a family:

<b>BEDROOM SIZE</b>	<b>MINIMUM NUMBER OF PERSONS</b>	<b>MAXIMUM NUMBER OF PERSONS</b>
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	6	10

2. The bedroom size assigned should not require persons of the opposite sex, other than husband and wife (or those acting as husband and wife) to occupy the same bedroom.
3. In assigning unit size, consideration shall be given to the following:
  - a. In individual cases of need or hardship the PHA has the power to deviate from this schedule (e.g. health conditions, etc.)
  - b. Infants and very young children less than two may share the same room.
  - c. Persons of different generations may not be required to share a bedroom.
  - d. Bedroom size shall consider all anticipated children to reside in the unit (pregnancy, adoption, foster care, etc.)
  - e. Live-In Aides shall be given a separate bedroom.

## **5-I.C. EXCEPTIONS TO OCCUPANCY STANDARDS**

### **Types of Exceptions**

#### PHA Policy

The PHA will consider granting exceptions to the occupancy standards at the family's request if the PHA determines the exception is justified by the relationship, age, sex, health or disability of family members, or other personal circumstances.

For example, an exception may be granted if a larger bedroom size is needed for medical equipment due to its size and/or function, or as a reasonable accommodation for a person with disabilities. An exception may also be granted for a smaller bedroom size in cases where the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides (according to the chart in Section 5-I.B) and the family does not want to transfer to a larger size unit.

When evaluating exception requests the PHA will consider the size and configuration of the unit. In no case will the PHA grant an exception that is in violation of local housing or occupancy codes, regulations or laws.



Requests from applicants to be placed on the waiting list for a unit size smaller than designated by the occupancy standards will be approved as long as the unit is not overcrowded according to local code, and the family agrees not to request a transfer for a period of two years from the date of admission, unless they have a subsequent change in family size or composition.

To prevent vacancies, the PHA may provide an applicant family with a larger unit than the occupancy standards permit. However, in these cases the family must agree to move to a suitable, smaller unit when another family qualifies for the larger unit and there is an appropriate size unit available for the family to transfer to.

## **Processing of Exceptions**

### PHA Policy

All requests for exceptions to the occupancy standards must be submitted in writing.

In the case of a request for exception as a reasonable accommodation, the PHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, the PHA will consider the exception request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

Requests for a larger size unit must explain the need or justification for the larger size unit, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source, unless the disability and the disability-related request for accommodation is readily apparent or otherwise known.

The PHA will notify the family of its decision within 10 business days of receiving the family's request.

## **PART II: UNIT OFFERS**

24 CFR 1.4(b)(2)(ii); 24 CFR 960.208

### **5-II.A. OVERVIEW**

The PHA must assign eligible applicants to dwelling units in accordance with a plan that is consistent with civil rights and nondiscrimination.

In filling an actual or expected vacancy, the PHA must offer the dwelling unit to an applicant in the appropriate sequence. The PHA will offer the unit until it is accepted. This section describes the PHA's policies with regard to the number of unit offers that will be made to applicants selected from the waiting list. This section also describes the PHA's policies for offering units with accessibility features.

### PHA Policy

The PHA will maintain a record of units offered, including location, date and circumstances of each offer, each acceptance or rejection, including the reason for the rejection.

## 5-II.B. OFFERING OF UNIT

1. The offering of a unit shall be in accordance with HUD Plan A.
2. A family shall be offered the next available and suitable unit (bedroom size) in sequence.
  - a. If the family accepts the unit, a lease shall be executed;
  - b. If the family rejects the unit, they shall be placed at the bottom of the waiting list with a new date/ time recorded and without federal preference.
3. Transfers have priority over new admissions in receiving the next available and appropriate unit.
4. Special Feature Units
  - a. To the maximum extent possible, units with special features shall be reserved for and utilized by those individuals requiring special features.
  - b. If a unit with special features becomes vacant, it shall be offered:
    1. First to a resident requiring special features;
    2. Then to a person on the Waiting List who is in need of special features.
  - c. A resident not requiring special features residing in a unit with special features may be required at the discretion of the Authority to move from the special features unit to a vacant unit if the special features unit is required by a disabled person.
  - d. If all special features units are occupied by residents requiring special feature units at the time a special feature applicant is selected, then the applicant is offered the unit available and has the right to accept or reject it. They may stay on the Waiting List until a special feature unit is available.

## 5-III.C TIME LIMIT FOR UNIT OFFER ACCEPTANCE OR REFUSAL

### PHA Policy

Applicants must accept or refuse a unit offer within 3 business days of the date of the unit offer.

Offers made by telephone will be confirmed by letter.

## 5-II.D. REFUSALS OF UNIT OFFERS

### **Good Cause for Unit Refusal**

An elderly or disabled family may decline an offer for designated housing. Such a refusal must not adversely affect the family's position on or placement on the public housing waiting list [24 CFR 945.303(d)].

### PHA Policy

Applicants may refuse to accept a unit offer for "*good cause*." *Good cause* includes situations in which an applicant is willing to move but is unable to do so at the time of the unit offer, or the applicant demonstrates that acceptance of the offer would cause undue hardship not related to considerations of the applicant's race, color, national origin, etc. [PH Occ GB, p. 104]. Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

Inaccessibility to source of employment, education, or job training, children's day care, or educational program for children with disabilities, so that accepting the

unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities

The family demonstrates to the PHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption

A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member

The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move

The unit has lead-based paint and the family includes children under the age of six

In the case of a unit refusal for good cause the applicant will not be removed from the waiting list as described later in this section. The applicant will remain at the top of the waiting list until the family receives an offer for which they do not have good cause to refuse.

The PHA will require documentation of good cause for unit refusals.

### **Unit Refusal Without Good Cause**

#### PHA Policy

When an applicant rejects the final unit offer without good cause, the PHA will remove the applicant's name from the waiting list and send notice to the family of such removal. The notice will inform the family of their right to request an informal hearing and the process for doing so (see Chapter 14).

The applicant may reapply for assistance if the waiting list is open. If the waiting list is not open, the applicant must wait to reapply until the PHA opens the waiting list.

### **5-II.E. ACCESSIBLE UNITS [24 CFR 8.27]**

PHAs must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities, and take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of a particular unit.

When an accessible unit becomes vacant, before offering such units to a non-disabled applicant the PHA must offer such units:

- First, to a current resident of another unit of the same development, or other public housing development under the PHA's control, who has a disability that requires the

special features of the vacant unit and is occupying a unit not having such features, or if no such occupant exists, then

- Second, to an eligible qualified applicant on the waiting list having a disability that requires the special features of the vacant unit.

When offering an accessible unit to an applicant not having a disability requiring the accessibility features of the unit, the PHA may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

#### PHA Policy

Families requiring an accessible unit may be over-housed in such a unit if there are no resident or applicant families of the appropriate size who also require the accessible features of the unit.

When there are no resident or applicant families requiring the accessible features of the unit, including families who would be over-housed, the PHA will offer the unit to a non-disabled applicant.

When offering an accessible unit to a non-disabled applicant, the PHA will require the applicant to agree to move to an available non-accessible unit within 30 days when either a current resident or an applicant needs the features of the unit and there is another unit available for the non-disabled family. This requirement will be a provision of the lease agreement.

#### **5-II.F. DESIGNATED HOUSING**

When applicable, the PHA's policies for offering units designated for elderly families only or for disabled families only are described in the PHA's Designated Housing.

The MMHA has designated housing in the Morris House. The Morris House is for elderly or near elderly residents. Elderly residents are given preference and near elderly residents are selected when there are no elderly applicants remaining.

# CHAPTER 6

## INCOME AND RENT DETERMINATIONS

## Chapter 6

### INCOME AND RENT DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 960, Subpart C]

#### PART I: ANNUAL INCOME

##### 6-I.A. OVERVIEW

The general regulatory definition of *annual income* shown below is from 24 CFR 5.609.

##### 5.609 Annual income.

- (a) Annual income means all amounts, monetary or not, which:
- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
  - (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
  - (3) Which are not specifically excluded in paragraph [5.609(c)].
  - (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

In addition to this general definition, HUD regulations establish policies for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Inclusions (Exhibit 6-1)
- Annual Income Exclusions (Exhibit 6-2)
- Treatment of Family Assets (Exhibit 6-3)
- Earned Income Disallowance (Exhibit 6-4)
- The Effect of Welfare Benefit Reduction (Exhibit 6-5)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this ACOP, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned

income are discussed together in section 6-I.D). Verification requirements for annual income are discussed in Chapter 7.

## 6-I.B. HOUSEHOLD COMPOSITION AND INCOME

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

<b>Summary of Income Included and Excluded by Person</b>	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(a)(1)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or cohead)	Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.

### **Temporarily Absent Family Members**

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18].

#### PHA Policy

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

### ***Absent Students***

#### PHA 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 are considered members of the family [24 CFR 5.403].

#### PHA Policy

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

### ***Absent Head, Spouse, or Cohead***

#### PHA 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.

### ***Individuals Confined for Medical Reasons***

#### PHA Policy

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member.

If there is a question about the status of a family member, 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.

### ***Joint Custody of Children***

#### PHA Policy

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

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

## **Caretakers for a Child**

### PHA Policy

If neither a parent nor a designated guardian remains in a household receiving assistance, the PHA will take the following actions.

If a responsible agency has determined that another adult is to be brought into the unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.

If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases the PHA will extend the caretaker's status as an eligible visitor.

At any time that custody or guardianship legally has been awarded to a caretaker, the lease will be transferred to the caretaker, as head of household.

During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

## 6-I.C. ANTICIPATING ANNUAL INCOME

The PHA is required to count all income “anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date” [24 CFR 5.609(a)(2)]. Policies related to anticipating annual income are provided below.

### **Basis of Annual Income Projection**

The PHA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes the PHA to use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected [HCV GB, p. 5-17]
- It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income) [24 CFR 5.609(d)]
- The PHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

#### PHA Policy

When the PHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the PHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income. Anytime current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the PHA to show why the historic pattern does not represent the family’s anticipated income.

#### ***Known Changes in Income***

If the PHA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

**Example:** An employer reports that a full-time employee who has been receiving \$6/hour will begin to receive \$6.25/hour in the eighth week after the effective date of the reexamination. In such a case the PHA would calculate annual income as follows:  $(\$6/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$6.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the PHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the PHA’s policy on reexaminations does not require interim reexaminations for other types of changes.

## Using Up-Front Income Verification (UIV) to Project Income

HUD strongly recommends the use of up-front income verification (UIV). UIV is “the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals” [PIH Notice 2004-01 Verification Guidance (“VG”), p. 7].

HUD allows PHAs to use UIV information in conjunction with family-provided documents to anticipate income.

### PHA Policy

PHA procedures for anticipating annual income will include the use of UIV methods approved by HUD in conjunction with family-provided documents dated within the last 60 days of the PHA interview date.

The PHA will follow “HUD Guidelines for Projecting Annual Income When Up-Front Income Verification (UIV) Data Is Available” in handling differences between UIV and family-provided income data. The guidelines depend on whether a difference is substantial or not. HUD defines *substantial difference* as a difference of \$200 or more per month.

**No Substantial Difference.** If UIV information for a particular income source differs from the information provided by a family by less than \$200 per month, the PHA will follow these guidelines:

If the UIV figure is less than the family’s figure, the PHA will use the family’s information.

If the UIV figure is more than the family’s figure, the PHA will use the UIV data unless the family provides documentation of a change in circumstances to explain the discrepancy (e.g., a reduction in work hours). Upon receipt of acceptable family-provided documentation of a change in circumstances, the PHA will use the family-provided information.

**Substantial Difference.** If UIV information for a particular income source differs from the information provided by a family by \$200 or more per month, the PHA will follow these guidelines:

The PHA will request written third-party verification from the discrepant income source in accordance with 24 CFR 5.236(b)(3)(i).

When the PHA cannot readily anticipate income (e.g., in cases of seasonal employment, unstable working hours, or suspected fraud), the PHA will review historical income data for patterns of employment, paid benefits, and receipt of other income.

The PHA will analyze all UIV, third-party, and family-provided data and attempt to resolve the income discrepancy.

The PHA will use the most current verified income data and, if appropriate, historical income data to calculate anticipated annual income.

## **6-I.D. EARNED INCOME**

### **Types of Earned Income Included in Annual Income**

#### ***Wages and Related Compensation [24 CFR 5.609(b)(1)]***

The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income.

#### PHA Policy

For persons who regularly receive bonuses or commissions, the PHA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the PHA will use the prior year amounts. In either case the family may provide, and the PHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the PHA will count only the amount estimated by the employer. The file will be documented appropriately.

#### ***Some Types of Military Pay***

All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

### **Types of Earned Income Not Counted in Annual Income**

#### ***Temporary, Nonrecurring, or Sporadic Income [24 CFR 5.609(c)(9)]***

This type of income (including gifts) is not included in annual income.

#### PHA Policy

Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

#### ***Children's Earnings [24 CFR 5.609(c)(1)]***

Employment income earned by children (including foster children) under the age of 18 years is not included in annual income. (See Eligibility chapter for a definition of *foster children*.)

#### ***Certain Earned Income of Full-Time Students***

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or cohead) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

#### ***Income of a Live-in Aide***

Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c)(5)]. (See Eligibility chapter for a full discussion of live-in aides.)

***Income Earned under Certain Federal Programs [24 CFR 5.609(c)(17)]***

Income from some federal programs is specifically excluded from consideration as income, including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b))
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

***Resident Service Stipend [24 CFR 5.600(c)(8)(iv)]***

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the PHA, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time.

### ***State and Local Employment Training Program***

Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

#### PHA 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 on reexaminations).

### ***HUD-Funded Training Programs***

Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

#### **PHA Policy**

To qualify as a training program, the program must meet the definition of *training program* provided above for state and local employment training programs.

***Earned Income Tax Credit.*** Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

***Earned Income Disallowance.*** The earned income disallowance is discussed in section 6-I.E below.



## **6-I.E. EARNED INCOME DISALLOWANCE [24 CFR 960.255]**

The earned income disallowance (EID) encourages people to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 960.255 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

### **Eligibility**

This disallowance applies only to individuals in families already participating in the public housing program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.
- Increased earnings by a family member whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

## **Calculation of the Disallowance**

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "prior income."

### PHA Policy

The PHA defines *prior income*, or *prequalifying income*, as the family member's last certified income prior to qualifying for the EID.

The family member's prior, or prequalifying, income remains constant throughout the period that he or she is receiving the EID.

### ***Initial 12-Month Exclusion***

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are cumulative and need not be consecutive.

### PHA Policy

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

### ***Second 12-Month Exclusion and Phase-In***

During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. The 12 months are cumulative and need not be consecutive.

### ***Lifetime Limitation***

The EID has a four-year (48-month) lifetime maximum. The four-year eligibility period begins at the same time that the initial exclusion period begins and ends 48 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

### PHA Policy

During the 48-month eligibility period, the PHA will conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

## **Individual Savings Accounts [24 CFR 960.255(d)]**

### PHA Policy

The PHA chooses not to establish a system of individual savings accounts (ISAs) for families who qualify for the EID.

The following rules pertaining to ISAs do not apply to this public housing program.

A qualified family paying income-based rent may choose an ISA instead of being given the EID. The PHA must advise the family that the ISA option is available. Families who choose the ISA will pay the higher rent and the PHA will deposit the difference between the higher rent and the EID rent in the savings account.

Amounts deposited to ISAs may only be withdrawn for the following reasons:

- Because the family is purchasing a home
- To pay education costs of family members
- Because the family is moving out of public or assisted housing
- To pay any other expenses the PHA authorizes to promote economic self-sufficiency

The PHA is required to maintain ISAs in interest bearing accounts, for which the family is credited with interest earned. The PHA may not charge the family a fee for maintaining the account.

At least once each year the PHA must provide the family with a statement of the balance in their account, including any interest earned, if required by state law.

### PHA Policy

When applicable, the PHA will provide the family with a statement of the balance in their account, including any interest earned, annually and upon request when the family makes withdrawals from the account.

If the family moves out of public housing, the PHA must return the balance in the family's ISA, less any amounts the family owes the PHA.

## **6-I.F. BUSINESS INCOME [24 CFR 5.609(b)(2)]**

Annual income includes “the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family” [24 CFR 5.609(b)(2)].

### **Business Expenses**

Net income is “gross income less business expense” [HCV GB, p. 5-19].

#### PHA Policy

To determine business expenses that may be deducted from gross income, the PHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

### **Business Expansion**

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

#### PHA 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.

### PHA 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.

### PHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of a tenant family provided an up-front loan of \$2,000 to help a business get started, 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**

### PHA Policy

If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

## **6-I.G. ASSETS [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]**

### **Overview**

There is no asset limitation for participation in the public housing program. However, HUD requires that the PHA include in annual income the “interest, dividends, and other net income of any kind from real or personal property” [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the PHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and PHA policies related to each type of asset.

### **General Policies**

#### ***Income from Assets***

The PHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes the PHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) the PHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, the PHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

#### PHA Policy

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.

### ***Valuing Assets***

The calculation of asset income sometimes requires the PHA to make a distinction between an asset's market value and its cash value.

- The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

#### **PHA Policy**

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28 and PH Occ GB, p. 121].

### ***Lump-Sum Receipts***

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

### ***Imputing Income from Assets [24 CFR 5.609(b)(3)]***

When net family assets are \$5,000 or less, the PHA will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of \$5,000, the PHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the current HUD-established passbook savings rate.

### ***Determining Actual Anticipated Income from Assets***

It may or may not be necessary for the PHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

### ***Withdrawal of Cash or Liquidation of Investments***

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

### ***Jointly Owned Assets***

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes “amounts derived (during the 12-month period) from assets to which any member of the family has access.”

#### **PHA Policy**

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the PHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the PHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the PHA will prorate the asset evenly among all owners.

### ***Assets Disposed Of for Less than Fair Market Value [24 CFR 5.603(b)]***

HUD regulations require the PHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

#### ***Minimum Threshold***

The PHA may set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

#### **PHA Policy**

The PHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$1,000.

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertifications, the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in nonrevocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.



### *Separation or Divorce*

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.

#### PHA Policy

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

### *Foreclosure or Bankruptcy*

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

### *Family Declaration*

#### PHA 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.

## **Types of Assets**

### ***Checking and Savings Accounts***

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero.

#### PHA Policy

In determining the value of a checking account, the PHA will use the average monthly balance for the last six months.

In determining the value of a savings account, the PHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, the PHA will multiply the value of the account by the current rate of interest paid on the account.

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

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

#### PHA Policy

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

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), the PHA will calculate asset income based on the earnings for the most recent reporting period.

### ***Equity in Real Property or Other Capital Investments***

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25 and PH, p. 121].

Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

#### PHA Policy

In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless the PHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

## ***Trusts***

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

### ***Revocable Trusts***

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

### ***Nonrevocable Trusts***

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

## ***Retirement Accounts***

### ***Company Retirement/Pension Accounts***

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the PHA must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

### ***IRA, Keogh, and Similar Retirement Savings Accounts***

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

### ***Personal Property***

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

#### PHA Policy

In determining the value of personal property held as an investment, 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.

Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

#### PHA Policy

Necessary personal property consists of only those items not held as an investment. It may include clothing, furniture, household furnishings, jewelry, and vehicles, including those specially equipped for persons with disabilities.

### ***Life Insurance***

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets [HCV GB 5-25]. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

## **6-I.H. PERIODIC PAYMENTS**

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

### **Periodic Payments Included in Annual Income**

Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].

Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

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

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)].

#### PHA Policy

When a delayed-start payment is received and reported during the period in which the PHA is processing an annual reexamination, the PHA will adjust the tenant rent retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with the PHA.

See the chapter on reexaminations for information about a family's obligation to report lump-sum receipts between annual reexaminations.

## **Periodic Payments Excluded from Annual Income**

Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone) [24 CFR 5.609(c)(2)]

### PHA Policy

The PHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]

Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]

Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]

Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)].

*Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.

Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].

### **6-I.I. PAYMENTS IN LIEU OF EARNINGS**

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)



## **6-I.J. WELFARE ASSISTANCE**

### **Overview**

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].

### **Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR 5.615]**

The PHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was a public housing resident at the time the sanction was imposed.

#### ***Covered Families***

The families covered by 24 CFR 5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

#### ***Imputed Income***

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, the PHA must include in annual income “imputed” welfare income. The PHA must request that the welfare agency inform the PHA when the benefits of a public housing resident are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

For special procedures related to grievance hearings based upon the PHA’s denial of a family’s request to lower rent when the family experiences a welfare benefit reduction, see Chapter 14, Grievances and Appeals.

#### ***Offsets***

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

## **6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]**

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with a tenant family.

### **Alimony and Child Support**

The PHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

#### PHA Policy

The PHA will count court-awarded amounts for alimony and child support unless the PHA verifies that (1) the payments are not being made and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

### **Regular Contributions or Gifts**

The PHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a tenant family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

#### PHA Policy

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by the PHA. For contributions that may vary from month to month (e.g., utility payments), the PHA will include an average amount based upon past history.

## 6-I.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

Reimbursement of medical expenses [24 CFR 5.609(c)(4)]

The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)], except that in accordance with Section 224 of the FY 2005 Appropriations Act, the portion of any athletic scholarship assistance available for housing costs must be included in annual income [PIH Notice 2005-16].

### PHA Policy

Regular financial support from parents or guardians to students for food, clothing personal items, and entertainment **is not** considered student financial assistance and is included **in** annual income.

Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]

Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]

Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]

Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]

Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]

Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]

Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:

- (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
- (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
- (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
- (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
- (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training

Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931.)

- (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
- (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
- (i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu)
- (j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805)
- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

## PART II: ADJUSTED INCOME

### 6-II.A. INTRODUCTION

#### Overview

HUD regulations require PHAs to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity (PHA) must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
  - (i) Unreimbursed medical expenses of any elderly family or disabled family;
  - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
- (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7, Verifications.

#### Anticipating Expenses

##### PHA 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., child care during school and nonschool periods and cyclical medical expenses), the PHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, the PHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The PHA may require the family to provide documentation of payments made in the preceding year.

### **6-II.B. DEPENDENT DEDUCTION**

A deduction of \$480 is taken for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or 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)].

### **6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION**

A single deduction of \$400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, cohead, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403].

**6-II.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]**

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income.

The medical expense deduction is permitted only for families in which the head, spouse, or cohead is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

**Definition of *Medical Expenses***

HUD regulations define *medical expenses* at 24 CFR 5.603(b) to mean “medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.”

PHA Policy

The most current IRS Publication 502, *Medical and Dental Expenses*, will be used to determine the costs that qualify as medical expenses.

<b>Summary of Allowable Medical Expenses from IRS Publication 502</b>	
<p>Services of medical professionals</p> <p>Surgery and medical procedures that are necessary, legal, noncosmetic</p> <p>Services of medical facilities</p> <p>Hospitalization, long-term care, and in-home nursing services</p> <p>Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor</p> <p>Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)</p>	<p>Substance abuse treatment programs</p> <p>Psychiatric treatment</p> <p>Ambulance services and some costs of transportation related to medical expenses</p> <p>The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)</p> <p>Cost and continuing care of necessary service animals</p> <p>Medical insurance premiums or the cost of a health maintenance organization (HMO)</p>
<p><b>Note:</b> This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.</p>	

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

### PHA Policy

This policy applies only to families in which the head, spouse, or cohead is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the PHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.



## **6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]**

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

### **Earned Income Limit on the Disability Assistance Expense Deduction**

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

#### PHA 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 disability assistance expenses will be capped by the sum of the family members’ incomes [PH Occ GB, p. 124].

## **Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the *PH Occupancy Guidebook* as follows:

“Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals” [PH Occ GB, p. 124], but only if these items are directly related to permitting the disabled person or other family member to work [HCV GB, p. 5-30].

HUD advises PHAs to further define and describe auxiliary apparatus [VG, p. 30].

### ***Eligible Auxiliary Apparatus***

#### PHA Policy

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

### ***Eligible Attendant Care***

The family determines the type of attendant care that is appropriate for the person with disabilities.

#### PHA Policy

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, the PHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### ***Payments to Family Members***

No disability expenses may be deducted for payments to a member of a tenant family [23 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the tenant family may be deducted if they are reimbursed by an outside source.

### **Necessary and Reasonable Expenses**

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

#### PHA 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 Medical and Disability Assistance Expenses**

#### PHA Policy

This policy applies only to families in which the head, spouse, or cohead is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the PHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

## **6-II.F. CHILD CARE EXPENSE DEDUCTION**

HUD defines *child care expenses* at 24 CFR 5.603(b) as “amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family’s household [VG, p. 26]. However, child care expenses for foster children that are living in the assisted family’s household, are included when determining the family’s child care expenses.

### **Qualifying for the Deduction**

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

##### PHA Policy

The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family’s request, the PHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

#### ***Seeking Work***

##### PHA Policy

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member’s efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member’s job search efforts are not commensurate with the child care expense being allowed by the PHA.

### ***Furthering Education***

#### PHA Policy

If the child care expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

### ***Being Gainfully Employed***

#### PHA Policy

If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

## **Earned Income Limit on Child Care Expense Deduction**

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person’s earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, child care expenses are limited to \$5,000.

The PHA must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

### PHA Policy

When the child care expense being claimed is to enable a family member to work, only one family member’s income will be considered for a given period of time. When more than one family member works during a given period, the PHA generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

## **Eligible Child Care Expenses**

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

### ***Allowable Child Care Activities***

#### PHA Policy

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.

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

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the PHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### ***Necessary and Reasonable Costs***

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

#### PHA Policy

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of child care costs, the PHA will use the schedule of child care costs from the local welfare agency. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the area.

## **6-II.G. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)]**

Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose. If 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].

The *Form HUD-50058 Instruction Booklet* states that the maximum allowable amount for total permissive deductions is less than \$90,000 per year.

### PHA Policy

The PHA has opted not to use permissive deductions.



## PART III: CALCULATING RENT

### 6-III.A. OVERVIEW OF INCOME-BASED RENT CALCULATIONS

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the tenant rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is called the utility reimbursement, which may be paid to the family or directly to the utility company by the PHA.

#### **TTP Formula [24 CFR 5.628]**

HUD regulations specify the formula for calculating the total tenant payment (TTP) for a tenant family. TTP is the highest of the following amounts, rounded to the nearest dollar:

30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)

10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)

The welfare rent (in as-paid states only)

A minimum rent between \$0 and \$50 that is established by the PHA

The PHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

#### ***Welfare Rent [24 CFR 5.628]***

##### PHA Policy

Welfare rent does not apply in this locality.

#### ***Minimum Rent [24 CFR 5.630]***

##### PHA Policy

The minimum rent for this locality is \$0.

**Optional Changes to Income-Based Rents [24 CFR 960.253(c)(2) and PH Occ GB, pp. 131-134]**

PHAs have been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory deductions. At the discretion of the PHA, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

The PHA's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to PHA designed income-based rents in the same manner as they are applied to the regulatory income-based rents.

The choices are limited only by the requirement that the method used not produce a TTP or tenant rent greater than the TTP or tenant rent produced under the regulatory formula.

PHA Policy

The PHA chooses not to adopt optional changes to income-based rents.

**Ceiling Rents [24 CFR 960.253 (c)(2) and (d)]**

Ceiling rents are used to cap income-based rents. They are part of the income-based formula. If the calculated TTP exceeds the ceiling rent for the unit, the ceiling rent is used to calculate tenant rent (ceiling rent/TTP minus utility allowance). Increases in income do not affect the family since the rent is capped. The use of ceiling rents fosters upward mobility and income mixing.

Because of the mandatory use of flat rents, the primary function of ceiling rents now is to assist families who cannot switch back to flat rent between annual reexaminations and would otherwise be paying an income-based tenant rent that is higher than the flat rent.

Ceiling rents must be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities) [PH Occ GB, p. 135].

PHA Policy

The PHA chooses not to use ceiling rents.

**Utility Reimbursement [24 CFR 960.253(c)(3)]**

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. HUD permits the PHA to pay the reimbursement to the family or directly to the utility provider.

PHA Policy

The PHA will make utility reimbursements to the family.

## **6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]**

### PHA 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.

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 TTP 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.

### PHA 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.

### PHA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent 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.

PHA 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.

PHA 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.

#### PHA 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.

The PHA may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption.

When the minimum rent is suspended, the TTP reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

<b>Example: Impact of Minimum Rent Exemption</b>	
Assume the PHA has established a minimum rent of \$35.	
<b>TTP – No Hardship</b>	<b>TTP – With Hardship</b>
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$35 Minimum rent	\$35 Minimum rent
Minimum rent applies. TTP = \$35	Hardship exemption granted. TTP = \$15

#### PHA 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.

For procedures pertaining to grievance hearing requests based upon the PHA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

#### PHA Policy

The PHA will require the family to repay the suspended amount within 30 calendar days of the PHA's notice that a hardship exemption has not been granted.

### ***Temporary Hardship***

If the PHA determines that a qualifying financial hardship is temporary, the PHA must reinstate the minimum rent from the beginning of the first of the month following the date of the family's request for a hardship exemption.

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.

For procedures pertaining to grievance hearing requests based upon the PHA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

#### PHA Policy

The PHA will enter into a repayment agreement in accordance with the PHA's repayment agreement policy (see Chapter 16).

### ***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.

#### PHA 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.



## **6-III.C. UTILITY ALLOWANCES [24 CFR 965, Subpart E]**

### **Overview**

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. When determining a family's income-based rent, the PHA must use the utility allowance applicable to the type of dwelling unit leased by the family.

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

### **Reasonable Accommodation [24 CFR 8]**

On request from a family, PHAs must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability [PH Occ GB, p. 172].

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies related to reasonable accommodations.

### **Utility Allowance Revisions [24 CFR 965.507]**

The PHA must review its schedule of utility allowances each year. Between annual reviews, the PHA must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based. Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective [PH Occ GB, p. 171].

The tenant rent calculations must reflect any changes in the PHA's utility allowance schedule [24 CFR 960.253(c)(3)].

#### PHA Policy

Unless the PHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

#### **6-III.D. PRORATED RENT FOR MIXED FAMILIES [24 CFR 5.520]**

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The PHA must prorate the assistance provided to a mixed family. The PHA will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, the PHA must:

- (1) Subtract the TTP from a maximum rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible.
- (2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy).
- (3) Multiply the member maximum subsidy by the number of eligible family members.
- (4) Subtract the subsidy calculated in the last step from the maximum rent. This is the prorated TTP.
- (5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family.

##### PHA Policy

Revised public housing maximum rents will be applied to a family's rent calculation at the first annual reexamination after the revision is adopted.

For policies related to the establishment of the public housing maximum rent see Chapter 16.

## **6-III.E. FLAT RENTS AND FAMILY CHOICE IN RENTS [24 CFR 960.253]**

### **Flat Rents [24 CFR 960.253(b)]**

The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

There is no utility allowance or reimbursement with flat rents. When the family elects to pay the flat rent, the flat rent amount quoted to the family by the PHA is the amount the family pays. Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

Policies related to the reexamination of families paying flat rent are contained in Chapter 9, and policies related to the establishment and review of flat rents are contained in Chapter 16.

### **Family Choice in Rents [24 CFR 960.253(a) and (e)]**

Once each year, the PHA must offer families the choice between a flat rent and an income-based rent. The family may not be offered this choice more than once a year. The PHA must document that flat rents were offered to families under the methods used to determine flat rents for the PHA.

#### PHA Policy

The annual PHA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination.

The PHA will require families to submit their choice of flat or income-based rent in writing and will maintain such requests in the tenant file as part of the admission or annual reexamination process.

The PHA must provide sufficient information for families to make an informed choice. This information must include the PHA's policy on switching from flat rent to income-based rent due to financial hardship and the dollar amount of the rent under each option. However, if the family chose the flat rent for the previous year the PHA is required to provide an income-based rent amount only in the year that a reexamination of income is conducted or if the family specifically requests it and submits updated income information.

### **Switching from Flat Rent to Income-Based Rent Due to Hardship [24 CFR 960.253(f)]**

A family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If the PHA determines that a financial hardship exists, the PHA must immediately allow the family to switch from flat rent to the income-based rent.

#### PHA Policy

Upon determination by the PHA that a financial hardship exists, the PHA will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request.

Reasons for financial hardship include:

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items
- Such other situations determined by the PHA to be appropriate

#### PHA Policy

The PHA considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent [PH Occ GB, p. 137].

### **Change in Flat Rents**

#### PHA Policy

Changes to flat rents, up or down, will not affect families paying flat rent until their next annual flat rent offer, at which time the family will be given the choice of switching back to income-based rent or of remaining on flat rent at the current (most recently adjusted) flat rent for their unit [PH Occ GB, pp. 137-138].

### **Flat Rents and Earned Income Disallowance [A&O FAQs]**

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

A family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their 48 month period would have the 12 cumulative months of full (100 percent) and phase-in (50 percent) exclusion continue while paying flat rent as long as the employment that is the subject of the exclusion continues, and the 48-month lifetime limit would continue uninterrupted. A family paying flat rent could therefore see a family member's 48-month lifetime limit expire while the family is paying flat rent.

### **Flat Rents and Mixed Families [A&O FAQs]**

Mixed families electing to pay flat rent must first have a flat rent worksheet completed to see if the flat rent must be prorated. The worksheet is located in Appendix III of the *Form HUD-50058 Instruction Booklet*.

If the flat rent is greater than or equal to the public housing maximum rent, there is no proration of flat rent and the family pays the flat rent for the unit.

If the flat rent is less than the maximum rent, the worksheet will calculate a prorated flat rent. The mixed family will pay the prorated flat rent.

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## EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

### 24 CFR 5.609

*(a) Annual income means all amounts, monetary or not, which:*

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph (c) of this section.
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

*(b) Annual income includes, but is not limited to:*

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31<sup>1</sup>; and

(B) Are not otherwise excluded under paragraph (c) of this section.

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<sup>1</sup> Text of 45 CFR 260.31 follows (next page).

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

#### **HHS DEFINITION OF "ASSISTANCE"**

#### **45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

#### **260.31 What does the term "assistance" mean?**

(a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) [The definition of "assistance"] excludes: (1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance



## EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

### 24 CFR 5.609

*(c) Annual income does not include the following:*

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;
- (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
- (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
- (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) [Reserved]
- (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
- (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits
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- a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));
- b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);
- c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
- d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
- e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);

g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);

h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));

k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

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

n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));

o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

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

q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and

s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

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## EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

### 24 CFR 5.603(b) Net Family Assets

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

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## EXHIBIT 6-4: EARNED INCOME DISALLOWANCE

### 24 CFR 960.255 Self-sufficiency incentive—Disallowance of increase in annual income.

(a) *Definitions.* The following definitions apply for purposes of this section.

*Disallowance.* Exclusion from annual income.

*Previously unemployed* includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

*Qualified family.* A family residing in public housing:

- (i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;
- (ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or
- (iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500.

(b) *Disallowance of increase in annual income.*

(1) *Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in 5.609 of this title) of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.

(2) *Second twelve month exclusion and phase-in.* During the second cumulative twelve month period after the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 48 month period. It only applies for a maximum of twelve months for disallowance under paragraph (b)(1) and a maximum of twelve months for disallowance under paragraph (b)(2), during the 48 month period starting from the initial exclusion under paragraph (b)(1) of this section.

(c) *Inapplicability to admission.* The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) *Individual Savings Accounts.* As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

- (1) The PHA must advise the family that the savings account option is available;
- (2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;
- (3) Amounts deposited in a savings account may be withdrawn only for the purpose of:

- (i) Purchasing a home;
- (ii) Paying education costs of family members;
- (iii) Moving out of public or assisted housing; or
- (iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;
- (4) The PHA must maintain the account in an interest bearing investment and must credit the

family with the net interest income, and the PHA may not charge a fee for maintaining the account;

(5) At least annually the PHA must provide the family with a report on the status of the account; and

(6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA



**EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION**

**24 CFR 5.615**

**Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

**(a) Applicability.** This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

**(b) Definitions.** The following definitions apply for purposes of this section:

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603.

*Imputed welfare income.* The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefit reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

*(c) Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

*(d) Review of PHA decision.*

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

*(e) PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

# CHAPTER 7

# VERIFICATION

## Chapter 7

### VERIFICATION

[24 CFR 960.259, 24 CFR 5.230]

#### INTRODUCTION

The PHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and tenants must cooperate with the verification process as a condition of receiving assistance. The PHA must not pass on the cost of verification to the family.

The PHA will follow the verification guidance provided by HUD in PIH Notice 2004-01 Verification Guidance ("VG") and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies established by the PHA.

#### PART I: GENERAL VERIFICATION REQUIREMENTS

##### 7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION

[24 CFR 960.259, 24 CFR 5.230]

The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR 960.259(a)(1)].

##### Consent Forms

It is required that all adult applicants and tenants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the PHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

##### Penalties for Failing to Consent [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the PHA will deny admission to applicants and terminate the lease of tenants. The family may request a hearing in accordance with the PHA's grievance procedures.

## **7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

### **HUD's Verification Hierarchy [VG, p. 11-14]**

HUD authorizes the PHA to use five 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.

#### PHA Policy

In order of priority, the forms of verification that the PHA will use are:

Up-front Income Verification (UIV) whenever available

Third-party Written Verification

Third-party Oral Verification

Review of Documents

Self-Certification

Each of the verification methods is discussed in subsequent sections below. Exhibit 7-1 at the end of the chapter contains an excerpt from the Verification Guidance that provides guidance with respect to how each method may be used.

### **Requirements for Acceptable Documents**

#### PHA Policy

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 calendar days of the date they are provided to the PHA. The documents must not be damaged, altered or in any way illegible.

The PHA will accept documents dated up to 6 months before the effective date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, the PHA would accept the most recent report.

Print-outs from web pages are considered original documents.

The PHA staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

Any family self-certifications must be made in a format acceptable to the PHA and must be signed in the presence of a PHA representative or PHA notary public.

## **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 ACOP. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

### PHA Policy

The PHA will document, in the family file, the following:

- Reported family annual income

- Value of assets

- Expenses related to deductions from annual income

- Other factors influencing the adjusted income or income-based rent determination

When the PHA is unable to obtain 3<sup>rd</sup> party verification, the PHA will document in the family file the reason that third-party verification was not available and will place a photocopy of the original document(s) in the family file. [24 CFR 960.259(c)(1); VG, p.15]



## **7-I.C. UP-FRONT INCOME VERIFICATION (UIV)**

Up-front income verification (UIV) refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to the PHA.

### PHA Policy

The PHA will inform all applicants and residents of its use of the following UIV resources during the admission and reexamination process:

HUD's EIV system

**[Insert any additional UIV sources used by the PHA]**

The PHA must restrict access to and safeguard UIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.

There may be legitimate differences between the information provided by the family and UIV-generated information. No adverse action can be taken against a family until the PHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the PHA's informal review/hearing processes.

### **Definition of Substantial Difference**

UIV information is used differently depending upon whether there is a *substantial difference* between information provided by the family and the UIV information. In "HUD Guidelines for Projecting Annual Income When UIV Data is Available," HUD recommends using \$200 per month as the threshold for a substantial difference. The PHA will use the \$200 per month as the threshold for a substantial difference.

See Chapter 6 for the PHA's policies on the definition of substantial difference and the use of UIV to project annual income and for the PHA's threshold for substantial difference.

### **When No Substantial Difference Exists**

If UIV information does not differ substantially from family information, the UIV documentation may serve as third-party written verification.

### **When a Substantial Difference Exists [24 CFR 5.236(b)]**

When there is a substantial difference between the information provided by the UIV source and the family, the PHA must request another form of third-party written verification and use any other verification methods (in priority order) to reconcile the difference(s).

## **Use of HUD's Enterprise Income Verification (EIV) System**

HUD's EIV system contains data showing earned income, unemployment benefits, Social Security and SSI benefits for resident families. HUD requires the PHA to use the EIV system when available. The following policies will apply when the PHA has access to HUD's EIV system.

The EIV system contains two main components: tenant income data reports and "exceeds threshold" reports.

### ***Tenant Income Data (TID) Reports***

The data shown on TID reports is updated quarterly. Data may be between 3 and 6 months old at the time reports are generated.

#### PHA Policy

The PHA will obtain TID reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

TID reports will be compared to family-provided information as part of the annual reexamination process. TID reports may be used in the calculation of annual income, as described in Chapter 6.I.C. TID reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between TID reports and family-provided information will be resolved as described in Chapter 6.I.C. and in this chapter.

TID reports will be used in interim reexaminations when it is necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits, and to verify that families claiming zero income are not receiving income from any of these sources.

TID reports will be retained in resident files with the applicable annual or interim reexamination documents.

When the PHA determines through TID reports and third party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

### ***Exceeds Threshold Reports (ETRs)***

The ETR is a tool for identifying families who may have concealed or under-reported income. Data in the ETR represents income for past reporting periods and may be between 6 months and 30 months old at the time ETRs are generated.

Families who have not concealed or under-reported income may appear on the ETR in some circumstances, such as loss of a job or addition of new family members.

#### **PHA Policy**

The PHA will generate and review ETRs on a monthly basis. The ETR threshold percentage will be adjusted as necessary based on the findings in the ETRs.

In reviewing ETRs, the PHA will begin with the largest discrepancies.

When the PHA determines that a resident appearing on the ETR has not concealed or under-reported income, the resident's name will be placed on a list of "false positive" reviews. To avoid multiple reviews in this situation, residents appearing on this list will be eliminated from ETR processing until a subsequent interim or annual reexamination has been completed.

When it appears that a family may have concealed or under-reported income, the PHA will request third-party written verification of the income in question.

When the PHA determines through ETR review and third party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

### ***EIV Identity Verification***

The EIV system verifies resident identities against SSA records. These records are compared to PIC data for a match on Social Security number, name, and date of birth.

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

#### **PHA Policy**

The PHA will identify residents whose identity verification has failed as part of the annual reexamination process.

The PHA will attempt to resolve PIC/SSA discrepancies by reviewing file documents. When the PHA determines that discrepancies exist due to PHA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

## **7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION**

### **Reasonable Effort and Timing**

Unless third-party verification is not required as described below, HUD requires the PHA to make at least two unsuccessful attempts to obtain third-party verification before using another form of verification [VG, p. 15].

#### PHA Policy

The PHA will diligently seek third-party verification using a combination of written and oral requests to verification sources. Information received orally from third parties may be used either to clarify information provided in writing by the third party or as independent verification when written third-party verification is not received in a timely fashion.

The PHA may mail, fax, e-mail, or hand deliver third-party written verification requests and will accept third-party responses using any of these methods. The PHA will send a written request for verification to each required source within 5 business days of securing a family's authorization for the release of the information and give the source 10 business days to respond in writing. If a response has not been received by the 11<sup>th</sup> business day, the PHA will request third-party oral verification.

The PHA will make a minimum of two attempts, one of which may be oral, to obtain third-party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file. Regarding third-party oral verification, PHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification the PHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

If a third party agrees to confirm in writing the information provided orally, the PHA will wait no more than 5 business days for the information to be provided. If the information is not provided by the 6th business day, the PHA will use any information provided orally in combination with reviewing family-provided documents (see below).

### **When Third-Party Information is Late**

When third-party verification has been requested and the timeframes for submission have been exceeded, the PHA will use the information from documents on a provisional basis. If the PHA later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, the PHA will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of the PHA's interim reexamination policy.

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

#### ***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.

#### ***Certain Assets and Expenses***

The PHA may accept a self-certification from the family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

The PHA may determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification [VG, p. 15].

#### **PHA Policy**

The PHA will use review of documents in lieu of requesting third-party verification when the market value of an individual asset or an expense is less than \$500 annually and the family has original documents that support the declared amount.

### ***Certain Income, Asset and Expense Sources***

The PHA will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification [VG, p. 15]. For example, the PHA will rely upon review of documents when the PHA determines that a third party's privacy rules prohibit the source from disclosing information.

#### PHA Policy

The PHA will determine that third-party verification is not available when there is a service charge for verifying an asset or expense *and* the family has original documents that provide the necessary information.

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].

The PHA will document, in the family file, the reason that the third-party verification was not available and will place a photocopy of the original document(s) in the family file. [VG, p. 15]

## **7-I.E. REVIEW OF DOCUMENTS**

### **Using Review of Documents as Verification**

#### PHA Policy

If the PHA has determined that third-party verification is not available or not required, the PHA will use documents provided by the family as verification.

The PHA may also review documents when necessary to help clarify information provided by third parties. In such cases the PHA will document in the file how the PHA arrived at a final conclusion about the income or expense to include in its calculations.

## **7-I.F. SELF-CERTIFICATION**

#### PHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the PHA.

The PHA may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a PHA representative or PHA notary public.

**PART II: VERIFYING FAMILY INFORMATION**

**7-II.A. VERIFICATION OF LEGAL IDENTITY**

PHA Policy

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

<b>Verification of Legal Identity for Adults</b>	<b>Verification of Legal Identity for Children</b>
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicle identification card U.S. military discharge (DD 214) U.S. passport Employer identification card	Certificate of birth Adoption papers Custody agreement Health and Human Services ID School records

If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the PHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the PHA and be signed in the presence of a PHA representative or PHA notary public.

Legal identity will be verified on an as needed basis.



## **7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and HCV, p. 5-12]**

For every family member age 6 or older, the family must provide documentation of a valid social security number (SSN), or a self-certification stating that no SSN has been issued. The self-certification must be executed personally by any family member 18 or older, or by a parent or guardian for a minor.

### PHA Policy

The PHA will also accept the following documents as evidence if the SSN is provided on the document:

Driver's license

Other identification card issued by a federal, state, or local agency, a medical insurance company or provider, or employer or trade union

Payroll stubs

Benefit award letters from government agencies; retirement benefit letters; life insurance policies

- Court records (real estate, tax notices, marriage and divorce, judgment or bankruptcy records)

If the family reports an SSN but cannot provide acceptable documentation of the number, the PHA will require a self-certification stating that documentation of the SSN cannot be provided at this time. The PHA will require documentation of the SSN within 60 calendar days from the date of the family member's self-certification mentioned above. If the family is an applicant, assistance cannot be provided until proper documentation of the SSN is provided.

### PHA Policy

The PHA will instruct the family to obtain a duplicate card from the local Social Security Administration (SSA) office.

For individuals who are at least 62 years of age and are unable to submit the required documentation of their SSN within the initial 60-day period, the PHA will grant an additional 60 calendar days to provide documentation.

Social security numbers must be verified only once during continuously-assisted occupancy.

If any family member obtains an SSN after admission to the program, the new SSN must be disclosed at the next regularly scheduled reexamination. In addition, if a child reaches the age of 6 and has no SSN, the parent or guardian must execute a self-certification stating that the child has no SSN at the next regularly scheduled reexamination.

The social security numbers of household members, such as live-in aids, must be verified for the purpose of conducting criminal background checks.

## **7-II.C. DOCUMENTATION OF AGE**

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

### PHA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, the PHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified only once during continuously-assisted occupancy.

## **7-II.D. FAMILY RELATIONSHIPS**

Applicants and tenants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

### PHA 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**

### PHA 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**

### PHA 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 document the divorce, or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

## **Absence of Adult Member**

### PHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

## **Foster Children and Foster Adults**

### PHA Policy

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

## **7-II.E. VERIFICATION OF STUDENT STATUS**

### PHA 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 claims full-time student status for an adult other than the head, spouse, or cohead, or

The family claims a child care deduction to enable a family member to further his or her education.

## **7-II.F. DOCUMENTATION OF DISABILITY**

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 resident's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at [www.os.dhhs.gov](http://www.os.dhhs.gov).

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 receipt of SSA benefits or SSI based upon disability is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions [VG, p. 23].

#### PHA Policy

For family members claiming disability who receive SSI or other disability payments from the SSA, the PHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system when it is available, or HUD's Tenant Assessment Subsystem (TASS). If documentation from HUD's EIV System or TASS 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 resident 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 5.603, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

### PHA Policy

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

## **7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]**

### **Overview**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. See the Eligibility chapter for detailed discussion of eligibility requirements. This chapter (7) discusses HUD and 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.

### PHA 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 7-2 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 ACOP. 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 U.S. Citizenship and Immigration Services (USCIS).

The PHA will follow all USCIS protocols for verification of eligible immigration status.



## **7-II.H. VERIFICATION OF PREFERENCE STATUS**

The PHA must verify any preferences claimed by an applicant.

### PHA Policy

The PHA offers a preference for working families, described in Section 4-III.B.

The PHA may verify that the family qualifies for the working family preference based on the family's submission of the working member's most recent paycheck stub indicating that the working member works at least 20 hours per week. The paycheck stub must have been issued to the working member within the last thirty days.

The PHA may also seek third party verification from the employer of the head, spouse, cohead or sole member of a family requesting a preference as a working family.

## **PART III: VERIFYING INCOME AND ASSETS**

Chapter 6, Part I of this ACOP describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures specified in Part I of this chapter.

### **7-III.A. EARNED INCOME**

#### **Tips**

##### PHA Policy

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

### **7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME**

##### PHA Policy

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

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year.

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

The PHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the PHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the PHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the PHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

## **7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

### **Social Security/SSI Benefits**

#### PHA Policy

To verify the SS/SSI benefits of applicants, the PHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the PHA will 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 has received the benefit verification letter they will be required to provide it to the PHA.

To verify the SS/SSI benefits of residents, the PHA will obtain information about social security/SSI benefits through the HUD EIV System or the Tenant Assessment Subsystem (TASS). If benefit information is not available in HUD systems, the PHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the PHA will 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 resident has received the benefit verification letter they will be required to provide it to the PHA.

## 7-III.D. ALIMONY OR CHILD SUPPORT

### PHA Policy

The way the PHA will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it *receives regular payments*, verification will be sought in the following order.

If payments are made through a state or local entity, the PHA will request a record of payments for the past 12 months and request that the entity disclose any known information about the likelihood of future payments.

Third-party verification from the person paying the support

Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules

Copy of the latest check and/or payment stubs

Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it *receives irregular or no payments*, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

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

### **7-III.E. ASSETS AND INCOME FROM ASSETS**

#### **Assets Disposed of for Less than Fair Market Value**

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

##### PHA Policy

The PHA will verify the value of assets disposed of only if:

The PHA does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and the PHA verified this amount. Now the person reports that she has given this \$10,000 to her son. The PHA has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the PHA will verify the value of this asset.

### **7-III.F. NET INCOME FROM RENTAL PROPERTY**

##### PHA 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.

## 7-III.G. RETIREMENT ACCOUNTS

### PHA Policy

When third-party verification is not available the type of original document that will be accepted depends upon the family member's retirement status.

*Before* retirement, the PHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

*Upon* retirement, the PHA will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

*After* retirement, the PHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

### **7-III.H. INCOME FROM EXCLUDED SOURCES**

A detailed discussion of excluded income is provided in Chapter 6, Part I.

The PHA must obtain verification for income exclusions only if, without verification, the PHA would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, the PHA will confirm that PHA records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

#### PHA Policy

The PHA will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family's rent (as is the case with the earned income disallowance). In all other cases, the PHA will report the amount to be excluded as indicated on documents provided by the family.

### **7-III.I. ZERO ANNUAL INCOME STATUS**

#### PHA Policy

The PHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by families claiming to have zero annual income.

## **PART IV: VERIFYING MANDATORY DEDUCTIONS**

### **7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that the PHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

#### **Dependent Deduction**

See Chapter 6 (6-II.B.) for a full discussion of this deduction. The PHA will 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 the Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The PHA will verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.



## **7-IV.B. MEDICAL EXPENSE DEDUCTION**

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

### **Amount of Expense**

#### PHA Policy

The PHA will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

Third-party verification form signed by the provider, when possible

If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case 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.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months

In addition, the PHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

### **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62 or a person with disabilities. The PHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter, and as described in Chapter 7 (7-IV.A) of this plan.

### **Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for the PHA's policy on what counts as a medical expense.

### **Unreimbursed Expenses**

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

#### PHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

### **Expenses Incurred in Past Years**

#### PHA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, the PHA will verify:

The anticipated repayment schedule

The amounts paid in the past, and

Whether the amounts to be repaid have been deducted from the family's annual income in past years

## **7-IV.C. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

### **Amount of Expense**

#### *Attendant Care*

##### PHA Policy

The PHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

Third-party verification form signed by the provider, when possible

If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months

#### *Auxiliary Apparatus*

##### PHA Policy

Expenses for auxiliary apparatus will be verified through:

Third-party verification of anticipated purchase costs of auxiliary apparatus

If third-party is not possible, 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

If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, the PHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

### **Family Member is a Person with Disabilities**

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.

#### PHA Policy

The PHA will seek 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.).

If third-party and document review 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.

#### PHA Policy

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

#### **7-IV.D. CHILD CARE EXPENSES**

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, the PHA must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care.
- The costs are reasonable.

#### **Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. 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 child care deduction, the costs must not be reimbursed by another source.

#### PHA Policy

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

## **Pursuing an Eligible Activity**

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.

### PHA 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 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 ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

#### *Gainful Employment*

The PHA will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

### **Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

#### PHA Policy

The PHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

The PHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The PHA will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

### **Reasonableness of Expenses**

Only reasonable child care costs can be deducted.

#### PHA Policy

The actual costs the family incurs will be compared with the PHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

If the family presents a justification for costs that exceed typical costs in the area, the PHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

**Exhibit 7-1: Excerpt from HUD Verification Guidance Notice (PIH 2004-01, pp. 11-14)**

<b>Upfront (UIV)</b>	<b>Highest (Highly Recommended, highest level of third party verification)</b>
<b>Written 3<sup>rd</sup> Party</b>	<b>High (Mandatory if upfront income verification is not available or if UIV data differs substantially from tenant-reported information)</b>
<b>Oral 3<sup>rd</sup> Party</b>	<b>Medium (Mandatory if written third party verification is not available)</b>
<b>Document Review</b>	<b>Medium-Low (Use on provisional basis)</b>
<b>Tenant Declaration</b>	<b>Low (Use as a last resort)</b>

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	<b>(LEVEL 5)</b>	<b>(LEVEL 4)</b>	<b>(LEVEL 3)</b>	<b>(LEVEL 2)</b>	<b>(LEVEL 1)</b>
Wages/Salaries	Use of computer matching agreements with a State Wage Information Collection Agency (SWICA) to obtain wage information electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the independent sources to obtain wage information.	In the event the independent source does not respond to the PHA's written request for information, the PHA may contact the independent source by phone or make an in person visit to obtain the requested information.	When neither form of third party verification can be obtained, the PHA may accept original documents such as consecutive pay stubs (HUD recommends the PHA review at least three months of pay stubs, if employed by the same employer for three months or more), W-2 forms, etc. from the tenant. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from earnings. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.
	Agreements with private vendor agencies, such as The Work Number or ChoicePoint to obtain wage and salary information.	The PHA may have the tenant sign a Request for Earnings Statement from the SSA to confirm past earnings. The PHA mails the form to SSA and the statement will be sent to the address the PHA specifies on the form.			
	Use of HUD systems, when available.				
<p><b>Verification of Employment Income:</b> The PHA should always obtain as much information as possible about the employment, such as start date (new employment), termination date (previous employment), pay frequency, pay rate, anticipated pay increases in the next twelve months, year-to-date earnings, bonuses, overtime, company name, address and telephone number, name and position of the person completing the employment verification form.</p> <p><b>Effective Date of Employment:</b> The PHA should always confirm start and termination dates of employment.</p>					



Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Self-Employment	Not Available	The PHA mails or faxes a verification form directly to sources identified by the family to obtain income information.	The PHA may call the source to obtain income information.	The PHA may accept any documents (i.e. tax returns, invoices and letters from customers) provided by the tenant to verify self-employment income. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not obtained.	The PHA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from self-employment. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.
<b>Verification of Self-Employment Income:</b> Typically, it is a challenge for PHAs to obtain third party verification of self-employment income. When third party verification is not available, the PHA should always request a notarized tenant declaration that includes a perjury statement.					
Social Security Benefits	Use of HUD Tenant Assessment System (TASS) to obtain current benefit history and discrepancy reports.	The PHA mails or faxes a verification form directly to the local SSA office to obtain social security benefit information. <b>(Not Available in some areas because SSA makes this data available through TASS. SSA encourages PHAs to use TASS.)</b>	The PHA may call SSA, with the tenant on the line, to obtain current benefit amount. <b>(Not Available in some areas because SSA makes this data available through TASS. SSA encourages PHAs to use TASS.)</b>	The PHA may accept an original SSA Notice from the tenant. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly social security benefits. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.
Welfare Benefits	Use of computer matching agreements with the local Social Services Agency to obtain current benefit amount electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the local Social Services Agency to obtain welfare benefit information.	The PHA may call the local Social Services Agency to obtain current benefit amount.	The PHA may review an original award notice or printout from the local Social Services Agency provided by the tenant. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly welfare benefits. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Child Support	Use of agreement with the local Child Support Enforcement Agency to obtain current child support amount and payment status electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the local Child Support Enforcement Agency or child support payer to obtain current child support amount and payment status.	The PHA may call the local Child Support Enforcement Agency or child support payer to obtain current child support amount and payment status.	The PHA may review an original court order, notice or printout from the local Child Support Enforcement Agency provided by the tenant to verify current child support amount and payment status. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares current child support amount and payment status. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.
Unemployment Benefits	Use of computer matching agreements with a State Wage Information Collection Agency to obtain unemployment compensation electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the State Wage Information Collection Agency to obtain unemployment compensation information.	The PHA may call the State Wage Information Collection Agency to obtain current benefit amount.	The PHA may review an original benefit notice or unemployment check stub, or printout from the local State Wage Information Collection Agency provided by the tenant. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares unemployment benefits. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.
	Use of HUD systems, when available.				
Pensions	Use of computer matching agreements with a Federal, State, or Local Government Agency to obtain pension information electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the pension provider to obtain pension information.	The PHA may call the pension provider to obtain current benefit amount.	The PHA may review an original benefit notice from the pension provider provided by the tenant. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly pension amounts. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Assets	Use of cooperative agreements with sources to obtain asset and asset income information electronically, by mail or fax or in person.	The PHA mails, faxes, or emails a verification form directly to the source to obtain asset and asset income information.	The PHA may call the source to obtain asset and asset income information.	The PHA may review original documents provided by the tenant. <b>Note: The PHA must document in the tenant file, the reason third party verification was not available.</b>	The PHA may accept a notarized statement or affidavit from the tenant that declares assets and asset income. <b>Note: The PHA must document in the tenant file, the reason third party verification was not available.</b>
Comments	Whenever HUD makes available wage, unemployment, and SSA information, the PHA should use the information as part of the reexamination process. Failure to do so may result in disallowed costs during a RIM review.	<b>Note:</b> The independent source completes the form and returns the form directly to the PHA. Agency. The tenant should not hand carry documents to or from the independent source.	The PHA should document in the tenant file, the date and time of the telephone call or in person visit, along with the name and title of the person that verified the current income amount.		The PHA should use this verification method as a last resort, when all other verification methods are not possible or have been unsuccessful. <b>Notarized statement should include a perjury penalty statement.</b>
<b>Note:</b> The PHA must not pass verification costs along to the participant.					
<b>Note:</b> In cases where the PHA cannot reliably project annual income, the PHA may elect to complete regular interim reexaminations (this policy should be apart of the PHA's written policies.)					

**Exhibit 7-2: Summary of Documentation Requirements for Noncitizens  
[HCV GB, pp. 5-9 and 5-10]**

<ul style="list-style-type: none"> <li>• All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.</li> <li>• Except for persons 62 or older, all noncitizens must sign a verification consent form</li> <li>• Additional documents are required based upon the person's status.</li> </ul>	
<p><b>Elderly Noncitizens</b></p> <ul style="list-style-type: none"> <li>• A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.</li> </ul>	
<p><b>All other Noncitizens</b></p> <ul style="list-style-type: none"> <li>• Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.</li> </ul>	
<ul style="list-style-type: none"> <li>• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li> <li>• Form I-94 Arrival-Departure Record annotated with one of the following:               <ul style="list-style-type: none"> <li>• “Admitted as a Refugee Pursuant to Section 207”</li> <li>• “Section 208” or “Asylum”</li> <li>• “Section 243(h)” or “Deportation stayed by Attorney General”</li> <li>• “Paroled Pursuant to Section 221 (d)(5) of the USCIS”</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Form I-94 Arrival-Departure Record with no annotation accompanied by:               <ul style="list-style-type: none"> <li>• A final court decision granting asylum (but only if no appeal is taken);</li> <li>• A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);</li> <li>• A court decision granting withholding of deportation; or</li> <li>• A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li> </ul>	<ul style="list-style-type: none"> <li>• Form I-688B Employment Authorization Card annotated “Provision of Law 274a.12(11)” or “Provision of Law 274a.12”.</li> </ul>
<ul style="list-style-type: none"> <li>• A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or</li> <li>• Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i></li> </ul>	

# CHAPTER 8

## LEASING AND INSPECTIONS

## **Chapter 8**

### **LEASING AND INSPECTIONS**

[24 CFR 5, Subpart G; 24 CFR 966, Subpart A]

#### **PART I: LEASING**

##### **8-I.A. OVERVIEW**

An eligible family may occupy a public housing dwelling unit under the terms of a lease. The lease must meet all regulatory requirements, and must also comply with applicable state and local laws and codes.

The term of the lease must be for a period of 12 months. The lease must be renewed automatically for another 12-month term, except that the PHA may not renew the lease if the family has violated the community service requirement [24 CFR 966.4(a)(2)].

Part I of this chapter contains regulatory information, when applicable, as well as the PHA's policies governing leasing issues.

##### **8-I.B. LEASE ORIENTATION**

###### PHA Policy

After unit acceptance but prior to occupancy, a PHA representative will provide a lease orientation to the family. The head of household or spouse is required to attend.

##### **Orientation Agenda**

###### PHA Policy

When families attend the lease orientation, they will be provided with:

- A copy of the lease
- General Conditions (Exhibit A)
- The Grievance Procedures (Exhibit B)
- The Occupancy Conditions (Exhibit C)
- Maintenance Fee Schedule or latest revision (Exhibit D)
- HUD Documents (50058/Privacy Act) (Exhibit E)

Topics to be discussed will include:

- Applicable deposits and other charges
- Review and explanation of lease provisions
- Unit maintenance and work orders

The PHA's reporting requirements  
Explanation of occupancy forms  
Community service requirements  
Family choice of rent

### **8-I.C. EXECUTION OF LEASE**

The lease must be executed by the tenant and the PHA, except for automatic renewals of a lease [24 CFR 966.4(a)(3)].

A lease is executed at the time of admission for all new residents. A new lease is also executed at the time of transfer from one PHA unit to another.

The lease must state the composition of the household as approved by the PHA (family members and any PHA-approved live-in aide) [24 CFR 966.4(a)(1)(v)]. See Section 8-I.D. for policies regarding changes in family composition during the lease term.

#### PHA Policy

1. No resident shall occupy a unit without a lease.
2. The lease shall be standard for all residents (see copy at end of section) and signed by the head of household and spouse.
3. Keys to units shall be given to the resident upon signing the lease and depositing the security deposit.
4. The lease shall not include any of the following clauses or substance:
  - a. Confession of Judgement.
  - b. Distraint for rent or other charges.
  - c. Exculpatory Clauses
  - d. Waiver of Legal Notice.
  - e. Waiver of Legal Proceedings.
  - f. Waiver of Jury Trial.
  - g. Waiver of right to appeal judicial error in legal proceedings.
  - h. Tenant chargeable with legal cost regardless of outcome.
5. The lease related rules and regulations, and schedule of charges, shall be posted in all project offices.

### **8-I.D. MODIFICATIONS TO THE LEASE**

The lease may be modified at any time by written agreement of the tenant and the PHA [24 CFR 966.4(a)(3)].

#### **Modifications to the Lease Form**

No changes shall be made to the lease.....

- a. Without 30 days prior notice
- b. Without the opportunity to present written comments for proposed lease changes to the Authority.

## **Other Modifications**

### PHA Policy

The lease will be amended to reflect all changes in family composition.

If, for any reason, any member of the household ceases to reside in the unit, the lease will be amended by drawing a line through the person's name. The head of household and PHA will be required to initial and date the change.

If a new household member is approved by the PHA to reside in the unit, the person's name and birth date will be added to the lease. The head of household and PHA will be required to initial and date the change. If the new member of the household is an adult, s/he will also be required to sign and date the lease.

Policies governing when and how changes in family composition must be reported are contained in Chapter 9, Reexaminations.

### **8-I.E. SECURITY DEPOSITS [24 CFR 966.4(b)(5)]**

At the option of the PHA, the lease may require security deposits. The amount of the security deposit cannot exceed one month's rent or a reasonable fixed amount as determined by the PHA. The PHA may allow for gradual accumulation of the security deposit by the family, or the family may be required to pay the security deposit in full prior to occupancy. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant after vacating the unit, or used for tenant services or activities.

### PHA Policy

1. The Authority shall collect as a security deposit from each tenant at the time the lease is signed, in an amount equal to one month's of the tenant's rent payment or \$50.00, whichever is greater.
2. The Authority shall use the security deposit for unpaid rent and/or tenant damages in accordance with HUD guidelines and the laws of the State of Ohio.
3. The security deposit will be returned to the Resident after vacating provided the Resident leaves a written forwarding address, gives proper thirty (30) days notice, and;
  - a. All rent and other charges are paid
  - b. The unit and its equipment are left clean;
  - c. There is no damage to the unit or its equipment beyond that due to normal wear and use;
  - d. The keys to the unit are returned to the Authority. Rent shall be charged until keys are returned.
4. The refund of the security deposit, minus any charges, will be made within thirty (30) days after vacating the unit. An itemized statement of the account shall also be provided.



## **8-I.F. PAYMENTS UNDER THE LEASE**

### **Rent Payments [24 CFR 966.4(b)(1)]**

Families must pay the amount of the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

The lease must specify the initial amount of the tenant rent at the beginning of the initial lease term, and the PHA must give written notice stating any change in the amount of tenant rent and when the change is effective.

#### PHA Policy

There shall be no minimum rent.

The Authority may establish maximum rents by resolution and per HUD regulations. These may be adjusted from time to time by resolution

Rent at the Morris House is collected monthly by an employee of the MMHA.

Residents at Floral View and Washington Commons must deposit rent monthly into an account at Minster Bank located in Troy, Ohio.

### **Late Fees and Nonpayment**

#### PHA Policy

A grace period is given so that payment may be made as late as the fifth banking day of the month before a charge of \$20.00 is assessed and eviction begun.

Returned checks shall be charged \$20.00 (Twenty Dollars) and will be considered the same as non-payment of rent.

Any payment received after the fifth banking day of the month as posted on the deposit slip shall be considered as non-payment and termination procedures shall begin.

Acceptance of late or partial payments shall not waive the right of the Authority to evict.

### **Excess Utility Charges**

If the PHA charges the tenant for consumption of excess utilities, the lease must state the basis for the determination of such charges. The imposition of charges for consumption of excess utilities is permissible only if the charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances [24 CFR 966.4(b)(2)].

Schedules of special charges for utilities that are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for excess utility consumption are not due and collectible until two weeks after the PHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b)(4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under the PHA grievance procedures. The PHA must not take the proposed action until the time for the tenant to request a grievance hearing has

expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

#### PHA Policy

1. Utilities (heat, electricity, water, sewage, trash) are furnished by the Authority.
2. A charge will be made for excessive usage. The procedure for figuring excessive usage charges is as follows:
  - a. Each month the utility bills for each project and bedroom size will be averaged for those units with basic Authority supplied appliances.
  - b. Tenants will be required to pay all utility charges in excess of the average for that month. Non-payment of this charge will be treated as non-payment of rent.
3. Families paying Flat Rent must pay all their gas and electric bill.

#### **Maintenance and Damage Charges**

If the PHA charges the tenant for maintenance and repair beyond normal wear and tear, the lease must state the basis for the determination of such charges [24 CFR 966.4(b)(2)].

Schedules of special charges for services and repairs which are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for maintenance and repair beyond normal wear and tear are not due and collectible until two weeks after the PHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b)(4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under the PHA grievance procedures. The PHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

#### PHA Policy

#### **Damages**

1. The Resident shall be charged for any damages to any part of the development caused by the Resident, members of his family, or guests (see Exhibit D in orientation documents for new tenants for rates).
2. The Resident shall be charged for any removable articles furnished by the Authority to the Resident and/or dwelling unit, that are discovered lost or missing.
3. Service and damage charges shall be added to the deposit slip and be payable with the next month's rent, provided at least two weeks' notice has been given. Non-payment of charges shall be subject to the same remedies for non-payment of rent.

## **PART II: INSPECTIONS**

### **8-II.A. OVERVIEW**

HUD rules require the PHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, the PHA may require additional inspections, in accordance with PHA Policy. This part contains the PHA's policies governing inspections, notification of unit entry, and inspection results.

### **8-II.B. TYPES OF INSPECTIONS**

#### **Move-In Inspections [24 CFR 966.4(i)]**

The lease must require the PHA and the family to inspect the dwelling unit prior to occupancy in order to determine the condition of the unit and equipment in the unit. A copy of the initial inspection, signed by the PHA and the resident, must be provided to the tenant and be kept in the resident file.

#### PHA Policy

The PHA and the Resident, or the Resident's representative, shall inspect the premises prior to occupancy by the Resident. The PHA will furnish the Resident with a written statement of the condition of the premises, the dwelling unit and the equipment provided with the unit. The statement shall be signed by the PHA and the Resident, and a copy shall be retained by the PHA in the Resident's folder.

#### **Move-Out Inspections [24 CFR 966.4(i)]**

The PHA must inspect the unit at the time the resident vacates the unit and must allow the resident to participate in the inspection if he or she wishes, unless the tenant vacates without notice to the PHA. The PHA must provide to the tenant a statement of any charges to be made for maintenance and damage beyond normal wear and tear.

The difference between the condition of the unit at move-in and move-out establishes the basis for any charges against the security deposit so long as the work needed exceeds that for normal wear and tear.

#### PHA Policy

At the time the Resident vacates the unit, the PHA and Resident shall inspect the dwelling unit. If the Resident fails to make arrangements to inspect the dwelling unit within 24 hours after vacating the dwelling unit, then the inspection shall be made by the PHA without the presence of the Resident. A copy of the inspection form shall be mailed to the Resident along with a statement of all charges due to the PHA (if any).

#### **Annual Inspections**

Under the Public Housing Assessment System (PHAS), the PHA is required to inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS) [24 CFR 902.43(a)(4)].

### PHA Policy

The authority will inspect the unit at least annually to check needed maintenance, Resident housekeeping, and other lease compliance matters. Resident will receive a written statement of the charges, if any, for repairs or removal of non-approved alterations to the unit.

### **Quality Control Inspections**

The purpose of quality control inspections is to assure that all defects were identified in the original inspection, and that repairs were completed at an acceptable level of craftsmanship and within an acceptable time frame

#### PHA Policy

Supervisory quality control inspections will be conducted in accordance with the PHA's maintenance plan.

### **Special Inspections**

#### PHA Policy

PHA staff may conduct a special inspection for any of the following reasons:

- Housekeeping
- Unit condition
- Suspected lease violation
- Preventive maintenance
- Routine maintenance
- There is reasonable cause to believe an emergency exists

### **Other Inspections**

#### PHA Policy

Building exteriors, grounds, common areas and systems will be inspected according to the PHA's maintenance plan.

## **8-II.C. NOTICE AND SCHEDULING OF INSPECTIONS**

### **Notice of Entry**

#### ***Non-emergency Entries [24 CFR 966.4(j)(1)]***

The PHA may enter the unit, with reasonable advance notification to perform routine inspections and maintenance, make improvements and repairs, or to show the unit for re-leasing between the hours of 8:00 a.m. and 5:00 p.m. A written statement specifying the purpose of the PHA entry delivered to the dwelling unit at least two days before such entry is considered reasonable advance notification.

Response to a request by Resident for repairs and service shall not require two day notice.

### ***Emergency Entries [24 CFR 966.4(j)(2)]***

The PHA may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe that an emergency exists. If no adult household member is present at the time of an emergency entry, the PHA must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

### **Scheduling of Inspections**

#### PHA Policy

Inspections will be conducted during business hours. If a family needs to reschedule an inspection, they must notify the PHA at least 24 hours prior to the scheduled inspection. The PHA will reschedule the inspection no more than once unless the resident has a verifiable good cause to delay the inspection. The PHA may request verification of such cause.

### **Attendance at Inspections**

Residents are required to be present for move-in inspections [24 CFR 966.4(i)]. There is no such requirement for other types of inspections.

#### PHA Policy

Except at move-in inspections, the resident is not required to be present for the inspection. The resident may attend the inspection if he or she wishes.

If no one is at home, the inspector will enter the unit, conduct the inspection and leave a copy of the inspection report in the unit.

## **8-II.D. INSPECTION RESULTS**

The PHA is obligated to maintain dwelling units and the project in decent, safe and sanitary condition and to make necessary repairs to dwelling units [24 CFR 966.4(e)].

### **Emergency Repairs [24 CFR 966.4(h)]**

If the unit is damaged to the extent that conditions are created which are hazardous to the life, health, or safety of the occupants, the tenant must immediately notify the PHA of the damage, and the PHA must make repairs within a reasonable time frame.

If the damage was caused by a household member or guest, the PHA must charge the family for the reasonable cost of repairs. The PHA may also take lease enforcement action against the family.

If the PHA cannot make repairs quickly, the PHA must offer the family standard alternative accommodations. If the PHA can neither repair the defect within a reasonable time frame nor offer alternative housing, rent shall be abated in proportion to the seriousness of the damage and loss in value as a dwelling. Rent shall not be abated if the damage was caused by a household member or guest, or if the resident rejects the alternative accommodations.

#### PHA Policy

When conditions in the unit are hazardous to life, health, or safety, the PHA will make repairs or otherwise abate the situation within 24 hours.

Defects hazardous to life, health or safety include, but are not limited to, the following:

Any condition that jeopardizes the security of the unit

Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling

Natural or LP gas or fuel oil leaks

Any electrical problem or condition that could result in shock or fire

Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit

Utilities not in service, including no running hot water

Conditions that present the imminent possibility of injury

Obstacles that prevent safe entrance or exit from the unit

Absence of a functioning toilet in the unit

Inoperable smoke detectors

### **Non-emergency Repairs**

#### PHA Policy

The PHA will correct non-life threatening health and safety defects within 15 business days of the inspection date. If the PHA is unable to make repairs within that period due to circumstances beyond the PHA's control (e.g. required parts or services are not available, weather conditions, etc.) the PHA will notify the family of an estimated date of completion.

The family must allow the PHA access to the unit to make repairs.

### **Resident-Caused Damages**

#### PHA Policy

Damages to the unit beyond wear and tear will be billed to the tenant in accordance with the policies in 8-I.G., Maintenance and Damage Charges.

Repeated or excessive damages to the unit beyond normal wear and tear will be considered a serious or repeated violation of the lease.

### ***Housekeeping***

#### PHA Policy

Residents whose housekeeping habits pose a non-emergency health or safety risk, encourage insect or rodent infestation, or cause damage to the unit are in violation of the lease. In these instances, the PHA will provide proper notice of a lease violation.

A re-inspection will be conducted within 30 days to confirm that the resident has complied with the requirement to abate the problem. Failure to abate the problem or allow for a re-inspection is considered a violation of the lease and may result in termination of tenancy in accordance with Chapter 13.

Notices of lease violation will also be issued to residents who purposely disengage the unit's smoke detector. Only one warning will be given. A second incidence will result in lease termination.

See full tenant lease for additional information on expected housekeeping by tenants.

# CHAPTER NINE

# RE-EXAMINATIONS



## Chapter 9

### REEXAMINATIONS

[24 CFR 960.257, 960.259, 966.4]

#### **PART I: ANNUAL REEXAMINATIONS FOR FAMILIES PAYING INCOME BASED RENTS [24 CFR 960.257]**

##### **9-I.A. OVERVIEW**

For those families who choose to pay income-based rent, the PHA must conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a)(1)]. For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years [24 CFR 960.257(a)(2)]. Policies related to the reexamination process for families paying flat rent are located in Part II of this chapter.

For all residents of public housing, whether those residents are paying income-based or flat rents, the PHA must conduct an annual review of community service requirement compliance. This annual reexamination is also a good time to have residents sign consent forms for criminal background checks in case the criminal history of a resident is needed at some point to determine the need for lease enforcement or eviction.

The PHA is required to obtain information needed to conduct reexaminations. How that information will be collected is left to the discretion of the PHA. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

This part contains the PHA's policies for conducting annual reexaminations.

##### **9-I.B. SCHEDULING ANNUAL REEXAMINATIONS**

The PHA must establish a policy to ensure that the annual reexamination for each family paying an income-based rent is completed within a 12 month period [24 CFR 960.257(a)(1)].

###### PHA Policy

Generally, the PHA will schedule annual reexaminations to coincide with the family's anniversary date. The PHA will begin the annual reexamination process approximately 120 days in advance of the scheduled effective date.

*Anniversary date* is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family transfers to a new unit, the PHA will perform a new annual reexamination, and the anniversary date will be changed.

The PHA may also 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 information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the PHA.

### PHA Policy

1. Each year all residents shall have their rent re-examined to determine the residents income, family composition and rent.
2. The procedure for re-determination shall be the same as that for determining eligibility.
3. Redetermination shall begin at least 60 days prior to the end of the lease and not more than 120 days prior to the end of the lease.

## **9-I.C. CONDUCTING ANNUAL REEXAMINATIONS**

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c)(2)].

### PHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a PHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

## **Change in Unit Size**

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The PHA may use the results of the annual reexamination to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

## **Criminal Background Checks**

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)(1)(ii)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

### PHA Policy

Each household member age 18 and over will be required to execute a consent form for a criminal background check as part of the annual reexamination process.

## **Compliance with Community Service**

For families who include nonexempt individuals, the PHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)].

See Chapter 11 for the PHA's policies governing compliance with the community service requirement.

## **9-I.D. EFFECTIVE DATES**

As part of the annual reexamination process, the PHA must make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a)(1)].

### PHA Policy

In general, an *increase* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be the anniversary date, but will always allow for the 30-day notice period.

In general, a *decrease* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date.

Rent reductions shall be made for the month following the month in which the family request is made.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the PHA by the date specified, and this delay prevents the PHA from completing the reexamination as scheduled.

## **PART II: REEXAMINATIONS FOR FAMILIES PAYING FLAT RENTS**

[24 CFR 960.257(2)]

**9-II.A. OVERVIEW**

HUD requires that the PHA offer all families the choice of paying income-based rent or flat rent at least annually. The PHA's policies for offering families a choice of rents are located in Chapter 6.

For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years [24 CFR 960.257(a)(2)]. The PHA is only required to provide the amount of income-based rent the family might pay in those years that the PHA conducts a full reexamination of income and family composition, or upon request of the family after the family submits updated income information [24 CFR 960.253(e)(2)].

As it does for families that pay income-based rent, on an annual basis, the PHA must also review community service compliance and should have each adult resident consent to a criminal background check.

This part contains the PHA's policies for conducting reexaminations of families who choose to pay flat rents.

**9-II.B. FULL REEXAMINATION OF FAMILY INCOME AND COMPOSITION**

**Frequency of Reexamination**

PHA Policy

For families paying flat rents, the PHA will conduct a full reexamination of family income and composition once every 3 years.

**Reexamination Policies**

PHA Policy

In conducting full reexaminations for families paying flat rents, the PHA will follow the policies used for the annual reexamination of families paying income-based rent as set forth in Sections 9-I.B through 9-I.D above.

### **9-II.C. REEXAMINATION OF FAMILY COMPOSITION (“ANNUAL UPDATE”)**

As noted above, full reexaminations are conducted every 3 years for families paying flat rents. In the years between full reexaminations, regulations require the PHA to conduct a reexamination of family composition (“annual update”) [24 CFR 960.257(a)(2)].

The annual update process is similar to the annual reexamination process, except that the PHA does not collect information about the family’s income and expenses, and the family’s rent is not recalculated following an annual update.

#### **Scheduling**

The PHA must establish a policy to ensure that the reexamination of family composition for families choosing to pay the flat rent is completed at least annually [24 CFR 960.257(a)(2)].

##### PHA Policy

For families paying flat rents, annual updates will be conducted in each of the 2 years following the full reexamination.

In scheduling the annual update, the PHA will follow the policy used for scheduling the annual reexamination of families paying income-based rent as set forth in Section 9-I.B. above.

#### **Conducting Annual Updates**

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c)(2)].

##### PHA Policy

Generally, the family will not be required to attend an interview for an annual update. However, if the PHA determines that an interview is warranted, the family may be required to attend.

Notification of the annual update will be sent by first-class mail and will inform the family of the information and documentation that must be provided to the PHA. The family will have 10 business days to submit the required information to the PHA. If the family is unable to obtain the information or documents within the required time frame, the family may request an extension. The PHA will accept required documentation by mail, by fax, or in person.

If the family’s submission is incomplete, or the family does not submit the information in the required time frame, the PHA will send a second written notice to the family. The family will have 10 business days from the date of the second notice to provide the missing information or documentation to the PHA.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

### ***Change in Unit Size***

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The PHA may use the results of the annual update to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

### ***Criminal Background Checks***

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

#### **PHA Policy**

Each household member age 18 and over will be required to execute a consent form for criminal background check as part of the annual update process.

### ***Compliance with Community Service***

For families who include nonexempt individuals, the PHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)].

See Chapter 11 for the PHA's policies governing compliance with the community service requirement.

## **PART III: INTERIM REEXAMINATIONS [24 CFR 960.257; 24 CFR 966.4]**

### **9-III.A. OVERVIEW**

Family circumstances may change throughout the period between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time.

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition change. The PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how the PHA will process both PHA- and family-initiated interim reexaminations.

### **9-III.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

The PHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to provisions of the public housing lease, the PHA has limited discretion in this area.

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. Policies related to such transfers are located in Chapter 12.

### PHA Policy

All families, those paying income-based rent as well as flat rent, must report all changes in family and household composition that occur between annual reexaminations (or annual updates).

The PHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

Adding a member with income to the family is not the same as a family member increasing/ decreasing income.

The fact that a new person is added requires a re-determination in all respects-including income.

If income changes after the new member has been added to the contract, then it would be treated normally.

### **New Family Members Not Requiring Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 966.4(a)(1)(v)].

### PHA Policy

The family must inform the PHA of the birth, adoption or court-awarded custody of a child within 10 business days.

### **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 966.4(a)(1)(v)] or other household member (live-in aide or foster child) [24 CFR 966.4(d)(3)].

The PHA may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which PHA consent will be given or denied. Under such policies, the factors considered by the PHA may include [24 CFR 966.4(d)(3)(i)]:

- Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.
- The PHA's obligation to make reasonable accommodation for handicapped persons.

### PHA Policy

Families must request PHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 consecutive days or a total of 30 cumulative calendar days during any 12 month period, and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the PHA prior to the individual moving into the unit.

The PHA will not approve the addition of new family or household members other than by birth, adoption, court-awarded custody, or marriage, if it will require the family to transfer to a larger size unit (under the transfer policy in Chapter 12), unless the family

can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by the PHA. Exceptions will be made on a case-by-case basis.

The PHA will not approve the addition of a new family or household member unless the individual meets the PHA's eligibility criteria (see Chapter 3).

If the PHA determines that an individual does not meet the PHA's eligibility criteria as defined in Chapter 3, the PHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The PHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

### **Departure of a Family or Household Member**

#### PHA Policy

If a family member ceases to reside in the unit, the family must inform the PHA within 10 business days. This requirement also applies to family members who had been considered temporarily absent, who are now permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the PHA within 10 business days.

### **9-III.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

#### PHA Policy

This section only applies to families paying income-based rent. Families paying flat rent are not required to report changes in income or expenses.

#### Interim Redeterminations

1. Families are required to report in writing all changes in family composition, in writing, within ten days.
  - a. Failure to report changes is cause for termination of assistance.
2. Rent Reductions shall be made for the month following the month in which the family request is made.
  - a. Documentation of the reduction shall follow within thirty (30) days;
  - b. If an error has been made, the tenant shall reimburse the Authority for the amount in error and could possibly face termination due to providing false information;
  - c. If documentation is not provided within thirty (30) days, assistance may be terminated.
3. Rent increases shall not be made, except in cases of zero income and/or unstable income situations, until the next annual redetermination.
  - a. Zero incomes shall be re-determined monthly by amending contract with zero figures each month until their income stabilizes.



- b. When the amendment period is over, the contract reverts back to the original rent unless a reduction is requested;
  - c. Zero Income families shall be required to provide evidence of how they exist during the month.
4. Income increases shall include employment increase, lump sum payments, delayed lump sum payments, (Welfare, Unemployment, SSI, SSD, Worker's Comp.; etc.)
  5. The method of figuring income depends on the base used for amending income:
    - a. Income is always annualized.
    - b. Income can be annualized based on:
      1. Average Income past 12 months corrected with anticipated changes for the next 12 months.
        - Requires no interim adjustment unless something was not anticipated or the average does not reflect anticipated reality.
        - Used to handle unstable incomes.
        - Normal ups and down are figures in rent already.
      2. Actual Income (current annualized)
        - Adjustments are always from this point forward—i.e. annualized until the next adjustment or annual re-determination.
    - c. Generally, use actual income annualized for Interim unless the income is very unstable. (Use blue sheet for calculations)

### **PHA-initiated Interim Reexaminations**

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not scheduled because of changes reported by the family.

#### PHA Policy

The PHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), the PHA will conduct an interim reexamination at the start, to adjust the exclusion with any changes in income, and at the conclusion of the second 12 month exclusion period (50 percent phase-in period).

If the family has reported zero income, the PHA will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.

If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), the PHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the annual reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the PHA will conduct an interim reexamination.

The PHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

## **9-III.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

#### PHA Policy

The family may notify the PHA of changes either orally or in writing. If the family provides oral notice, the PHA may also require the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the PHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the PHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, by fax, or in person.

### **Effective Dates**

The PHA must make the interim reexamination within a reasonable time after the family request [24 CFR 960.257(b)].

#### PHA Policy

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

## **PART IV: RECALCULATING TENANT RENT**

### **9-IV.A. OVERVIEW**

For those families paying income-based rent, the PHA must recalculate the rent amount based on the income information received during the reexamination process and notify the family of the changes [24 CFR 966.4, 960.257]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

#### **9-IV.B. CHANGES IN UTILITY ALLOWANCES [24 CFR 965.507, 24 CFR 966.4]**

The tenant rent calculations must reflect any changes in the PHA's utility allowance schedule [24 CFR 960.253(c)(3)]. Chapter 16 discusses how utility allowance schedules are established.

##### PHA Policy

Unless the PHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

#### **9-IV.C. NOTIFICATION OF NEW TENANT RENT**

The public housing lease requires the PHA to give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective [24 CFR 966.4(b)(1)(ii)].

When the PHA re-determines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA's schedule of Utility Allowances for families in the PHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the PHA must notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA's grievance procedure [24 CFR 966.4(c)(4)].

##### PHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the tenant rent.

#### **9-IV.D. DISCREPANCIES**

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of rent are discovered, corrections will be made in accordance with the policies in Chapter 15.

# CHAPTER TEN

## PETS

## Chapter 10

### PETS

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

#### PART I: ASSISTANCE ANIMALS

[Section 504; Fair Housing Act (42 U.S.C.); 24 CFR 5.303]

##### 10-I.A. OVERVIEW

This part discusses situations under which permission for an assistance animal may be denied, and also establishes standards for the care of assistance animals.

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or that provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals – often referred to as “service animals,” “assistive animals,” “support animals,” or “therapy animals” – perform many disability-related functions, including but not limited to the following:

- Guiding individuals who are blind or have low vision
- Alerting individuals who are deaf or hearing impaired
- Providing minimal protection or rescue assistance
- Pulling a wheelchair
- Fetching items
- Alerting persons to impending seizures
- Providing emotional support to persons with disabilities who have a disability-related need for such support

Assistance animals that are needed as a reasonable accommodation for persons with disabilities are not considered pets, and thus, are not subject to the PHA’s pet policies described in Parts II through IV of this chapter [24 CFR 5.303; 960.705].

##### 10-I.B. APPROVAL OF ASSISTANCE ANIMALS

A person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person’s disability and his or her need for the animal [PH Occ GB, p. 179].

A PHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with the disability [PH Occ GB, p. 178].

A PHA's refusal to permit persons with a disability to use and live with an assistance animal that is needed to assist them, would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless [PH Occ GB, p. 179]:

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others

PHAs have the authority to regulate assistance animals under applicable federal, state, and local law [24 CFR 5.303(b)(3); 960.705(b)(3)].

#### PHA Policy

For an animal to be excluded from the pet policy and be considered an assistance animal, there must be a person with disabilities in the household, and the family must request and the PHA approve a reasonable accommodation in accordance with the policies contained in Chapter 2.

Defined:

1. An Assistance Animal is any animal that is trained or is in training to aid a person's disability.
2. An Assistance Animal is not considered a pet but a disability device or extension of the disabled person.
3. An Assistance Animal is any animal prescribed by a physician to assist/support in the medical therapy of a person. The need for formal training and permanent registration/tagged as an "Ohio Handicapped Assistance Animal" is not applicable to this animal.

Policy:

1. An Assistance Animal is exempt from the Pet Policy, Pet Contract and Pet Deposit.
2. An Assistance Animal shall be permitted in any unit, provided they are in compliance with state, federal and local law, if applicable.

State Requirements:

1. State law requires Assistance Animals, primarily dogs, be;
  - a. Leashed at all times, except in the unit or specified contained areas;
  - b. Covered by Renter's Liability insurance. Therapeutic animals are exempt. Should insurance become an undue financial burden, please advise the Authority. Each situation will be evaluated on a case by case basis.
  - c. Be registered and tagged as "Ohio Handicap Assistance Dog."

Procedures:

1. Notify the Authority, in writing, that an Assistance or Therapeutic Animal is required.
2. Provide a copy of the registration and Renter's liability insurance coverage to the Authority, if applicable.
3. Complete and sign the Assistance Animal Certification Statement, if applicable.

Health Requirements:

1. The Authority requires the Assistance Animal be fully inoculated at least yearly. (Health certificate must be on file)
2. The owner be responsible for waste removal when able or appropriate.
3. The Assistance Animal must be kept in good health and worm free.
4. Notify the fire and police departments the unit has an assistance animal.

**10-I.C. CARE AND HANDLING**

HUD regulations do not affect any authority a PHA may have to regulate assistance animals under federal, state, and local law [24 CFR 5.303; 24 CFR 960.705].

PHA Policy

Residents must care for assistance animals in a manner that complies with state and local laws, including anti-cruelty laws.

Residents must ensure that assistance animals do not pose a direct threat to the health or safety of others, or cause substantial physical damage to the development, dwelling unit, or property of other residents.

When a resident’s care or handling of an assistance animal violates these policies, the PHA will consider whether the violation could be reduced or eliminated by a reasonable accommodation. If the PHA determines that no such accommodation can be made, the PHA may withdraw the approval of a particular assistance animal.

**PART II: PET POLICIES FOR ALL DEVELOPMENTS**

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

**10-II.A. OVERVIEW**

The purpose of a pet policy is to establish clear guidelines for ownership of pets and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. It also establishes reasonable rules governing the keeping of common household pets. This part contains pet policies that apply to all developments.

**10-II.B. PET POLICY AND CONTRACT**

The authority shall allow pets in developments and units under certain conditions outlined below.

1. A pet contract for each pet shall be signed and appropriate documents attached.
  - a. The Pet Contract incorporates the Pet Policy.
  - b. Common household pets (dogs, cats, birds, fish).
  - c. Only one pet per unit (excluding aquariums) will be allowed.
  - d. No reptiles, snakes or amphibians allowed.
2. A pet deposit is made in the amount of:  
Cats- \$200.00                  Dogs- \$300.00  
Bird Cage- \$50.00              Other- \$50.00

Refund- The pet deposit will be refunded, minus any damages, in whole or part, that are incurred.

3. Violation of the Policy shall be grounds for either or both the termination of the Pet Contract and/or termination of the tenancy.
4. Mandatory Requirements:
  - a. All Pets must be current on inoculations and have Health Certificate filed yearly.
  - b. All animals waste must be removed immediately and appropriately inside or outside of the unit.

NOTE: Cat litter shall not be flushed down the toilet, but must be disposed of through garbage procedures. Animal waste must be bagged and disposed of in the dumpster.

- c. All pets must be restrained in common areas, i.e. cats and birds must be in carriers, dogs on a 4 foot leash, and must be accompanied by an adult at all times within the common areas.
  - d. All pets must be licensed, if applicable (ORC 955.22).
  - e. All pets must be appropriately and properly cared for at all times, i.e. food, water, cleanliness.
  - f. No pet can be allowed to become a nuisance or threat to the health and safety of other Residents or employees.
5. Animals used to assist the disabled shall be exempted from the Pet Policy, Pet Contract and Pet Deposits requirement and are addressed above.
6. Limitations:
  - a. Dogs must be under 25 pounds at mature growth.
  - b. Cats must be declawed.
  - c. Animals must be spayed or neutered.
  - d. Birds must be caged.
7. Hold Harmless
  - a. The owner is totally and absolutely responsible for the pet's actions.
  - b. The Authority allows pets solely because the Authority is mandated to do so by law.

### **PART III: PET DEPOSITS AND FEES IN ELDERLY/DISABLED DEVELOPMENTS**

#### **10-III.A. OVERVIEW**

This part describes the PHA's policies for pet deposits and fees in elderly, disabled and mixed population developments. Policies governing deposits and fees in general occupancy developments are described in Part IV.

#### **10-III.B. PET DEPOSITS**

##### **Payment of Deposit**

The PHA may require tenants who own or keep pets in their units to pay a refundable pet deposit. This deposit is in addition to any other financial obligation generally imposed on tenants of the project [24 CFR 5.318(d)(1)].



The maximum amount of pet deposit that may be charged by a PHA on a per dwelling unit basis, is the higher of the total tenant payment (TTP) or such reasonable fixed amount as the PHA may require. The PHA may permit gradual accumulation of the pet deposit by the pet owner [24 CFR 5.318(d)(3)].

The pet deposit is not part of the rent payable by the resident [24 CFR 5.318(d)(5)].

PHA Policy

Pet owners are required to pay a pet deposit in addition to any other required deposits. The amount of the deposit is the higher of the family's total tenant payment or \$50.00, and must be paid in full before the pet is brought on the premises.

**Refund of Deposit [24 CFR 5.318(d)(1)]**

The PHA may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet, including (but not limited to) the costs of repairs and replacements to, and fumigation of, the tenant's dwelling unit. The PHA must refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet in the unit.

PHA Policy

The PHA will refund the pet deposit to the resident, less the costs of any damages caused by the pet to the dwelling unit, within 30 days of move-out or removal of the pet from the unit.

The resident will be billed for any amount that exceeds the pet deposit.

The PHA will provide the resident with a written list of any charges against the pet deposit within 10 business days of the move-out inspection. If the resident disagrees with the amount charged to the pet deposit, the PHA will provide a meeting to discuss the charges.

**10-III.C. OTHER CHARGES**

**Pet-Related Damages During Occupancy**

PHA Policy

All reasonable expenses incurred by the PHA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

The cost of repairs and replacements to the resident's dwelling unit; Fumigation of the dwelling unit; Repairs to common areas of the project

The expense of flea elimination shall also be the responsibility of the resident.

If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.G, Maintenance and Damage Charges. Pet deposits will not be applied to the costs of pet-related damages during occupancy.

Charges for pet-related damage are not part of rent payable by the resident.

# CHAPTER ELEVEN

# COMMUNITY SERVICE

## Chapter 11

### COMMUNITY SERVICE

#### PART I: COMMUNITY SERVICE REQUIREMENT

##### 11-I.A. OVERVIEW

HUD regulations pertaining to the community service requirement are contained in 24 CFR 960 Subpart F (960.600 through 960.609). PHAs and residents must comply with the community service requirement, effective with PHA fiscal years that commenced on or after October 1, 2000. Per 903.7(1)(1)(iii), the PHA Plan must contain a statement of the how the PHA will comply with the community service requirement, including any cooperative agreement that the PHA has entered into or plans to enter into.

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities [24 CFR 960.601(b)].

In administering community service requirements, the PHA must comply with all nondiscrimination and equal opportunity requirements [24 CFR 960.605(c)(5)].

##### 11-I.B. REQUIREMENTS

Each adult resident of the PHA, who is not exempt, must [24 CFR 960.603(a)]:

- Contribute 8 hours per month of community service; or
- Participate in an economic self-sufficiency program (as defined in the regulations) for 8 hours per month; or
- Perform 8 hours per month of combined activities (community service and economic self-sufficiency programs).

##### PHA Policy

An individual may not skip a month and then double up the following month, unless special circumstances warrant it. The PHA will make the determination of whether to permit a deviation from the schedule.

Individuals who have special circumstances which they believe will prevent them from completing the required community service hours for a given month, must notify the PHA in writing within 5 business days of the circumstances becoming known. The PHA will review the request and notify the individual, in writing, of its determination within 10 business days. The PHA may require those individuals to provide documentation to support their claim.

##### Definitions

##### ***Exempt Individual [24 CFR 960.601(b)]***

An *exempt individual* is an adult who:

- Is age 62 years or older

- Is blind or disabled (as defined under section 216[i][1] or 1614 of the Social Security Act), and who certifies that because of this disability s/he is unable to comply with the service provisions
- Is a primary caretaker of such an individual
- Is engaged in work activities
- Is participating in or exempted from a welfare to work program.
- Employed (full time or part time).

PHA Policy

The PHA will consider 20 hours per week as the minimum number of hours needed to qualify for a work activity exemption.

***Community Service [PH Occ GB, p. 174]***

*Community service* is volunteer work which includes, but is not limited to:

- Work at a local institution including but not limited to: school, child care center, hospital, hospice, recreation center, senior center, adult day care center, homeless shelter, indigent feeding program, cooperative food bank, etc.
- Work with a nonprofit organization that serves PHA residents or their children such as: Boy Scouts, Girl Scouts, Boys or Girls Clubs, 4-H programs, PAL, Garden Center, community clean-up programs, beautification programs, other youth or senior organizations
- Work at the PHA to help improve physical conditions
- Work at the PHA to help with children’s programs
- Work at the PHA to help with senior programs
- Helping neighborhood groups with special projects
- Working through a resident organization to help other residents with problems, serving as an officer in a resident organization, serving on the resident advisory board
- Caring for the children of other residents so they may volunteer

NOTE: Political activity is excluded for purposes of eligible community service activities.

***Economic Self-Sufficiency Program [24 CFR 5.603(b)]***

For purposes of satisfying the community service requirement, an *economic self-sufficiency program* is defined by HUD as: Any program designed to encourage, assist, train, or facilitate economic independence of assisted families or to provide work for such families.

These economic self-sufficiency programs can include:

- Job readiness programs;
- Job training programs;
- GED classes;
- Substance abuse or mental health counseling;
- English proficiency or literacy (reading) classes;
- Apprenticeships

- Budgeting and credit counseling;
- Any kind of class that helps a person toward an economic independence; and
- Full time student status at any school, college or vocational school.

***Work Activities [42 U.S.C. 607(d)]***

As it relates to an exemption from the community service requirement, *work activities* means:

- Employment
- Childcare Service
- Community Service
- Work Skill Enhancement: ( OJT, JS, WE, VT, Education)

**Family Requirements**

1. The eight hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.
2. At least eight (8) hours of activity must be performed every month.
3. Activities must be performed within the community and not outside the jurisdictional area of the Authority.
4. Family Obligations:
  - At lease execution or re-determination, all adult members (18 or older) of a public housing resident family must
    1. Provide documentation that they are exempt from Community Service requirement if they qualify for an exemption; and
    2. Sign a certification that they have received and read this policy and understand that if they are not exempt, failure to comply with the Community Service Requirement will result in non-renewal of their lease.
  - At each annual re-determination, non-exempt family members must present completed documentation form (to be provided by the Authority) of activities performed over the previous twelve months. This form will include places for signatures of supervisors, instructors, counselors certifying the number of hours contributed.
  - If a family member is found to be non-compliant at re-determination he/she and the Head of Household will sign an agreement with the Authority to make up the deficient hours over the next twelve month period.
5. Change in exempt status:
  - If, during the twelve (12) month period, a non-exempt person becomes exempt, it is his/her responsibility to report this to the Authority and provide documentation of such.

**11-I.D. DOCUMENTATION AND VERIFICATION [24 CFR 960.605(c)(4)]**

The PHA must retain reasonable documentation of service requirement performance or exemption in participant files.

## **Documentation and Verification of Exemption Status**

### PHA Policy

All family members who claim they are exempt from the community service requirement will be required to sign the community service exemption certification form found in Exhibit 11-3. The PHA will provide a completed copy to the family and will keep a copy in the tenant file.

The PHA will verify that an individual is exempt from the community service requirement by following the verification hierarchy and documentation requirements in Chapter 7.

The PHA makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with the PHA's determination, s/he can dispute the decision through the PHA's grievance procedures (see Chapter 14).

## **11-I.E. NONCOMPLIANCE**

### **Initial Noncompliance**

The lease specifies that it is renewed automatically for all purposes, unless the family fails to comply with the community service requirement. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term [24 CFR 960.603(b)].

If the tenant or another family member has violated the community service requirement, the PHA may not renew the lease upon expiration of the twelve-month term of the lease, unless the tenant and any other noncompliant family member enter into a written agreement with the PHA. Under this agreement the tenant or noncompliant family member must agree to cure the noncompliance by completing the additional hours of community service or economic self-sufficiency needed to make up the total number of hours required, over the twelve-month term of the new lease. In addition, all other members of the family who are subject to the service requirement must be currently complying with the service requirement or must no longer be residing in the unit [24 CFR 960.607(c)].

### **Non-compliance of family member penalty**

1. During the annual re-determination process and 30-days prior to the lease expiration, the Authority will begin reviewing the exempt or non-exempt status and compliance of family members.
2. If the Authority finds a family member to be in non-compliance, the Authority will enter into an agreement with the non-compliant member and the Head of Household to make up the deficient hours over the next twelve (12) month period;
3. If, at the next annual re-determination, the family member is still not compliant, the lease will not be renewed and the entire family will have to vacate, unless the non-compliant member agrees to move out of the unit.
4. The family may use the Authority's Grievance Procedure to protest the lease termination.

## **PART II: IMPLEMENTATION OF COMMUNITY SERVICE**

### **11-II.A. OVERVIEW**

Each PHA must develop a policy for administration of the community service and economic self-sufficiency requirements for public housing. It is in the PHA's best interests to develop a viable, effective community service program, to provide residents the opportunity to engage in the community and to develop competencies.

#### **PHA Implementation of Community Service**

The PHA may not substitute any community service or self-sufficiency activities performed by residents for work ordinarily performed by PHA employees, or replace a job at any location where residents perform activities to satisfy the service requirement [24 CFR 960.609].

#### **PHA Program Design**

The PHA may administer qualifying community service or economic self-sufficiency activities directly, or may make community service activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions [24 CFR 960.605(b)].

##### PHA Policy

The PHA will attempt to provide the broadest choice possible to residents as they choose community service activities.

The PHA's goal is to design a service program that gives residents viable opportunities to become involved in the community and to gain competencies and skills. The PHA will work with resident organizations and community organizations to design, implement, assess and recalibrate its community service program.

The PHA will make every effort to identify volunteer opportunities throughout the community, especially those in proximity to public housing developments. To the greatest extent possible, the PHA will provide names and contacts at agencies that can provide opportunities for residents, including persons with disabilities, to fulfill their community service obligations.

Any written agreements or partnerships with contractors and/or qualified organizations, including resident organizations, are described in the PHA Plan.

The PHA will provide in-house opportunities for volunteer work or self-sufficiency programs when possible.

## EXHIBIT 11-1: COMMUNITY SERVICE AND SELF-SUFFICIENCY POLICY

### A. Background

The Quality Housing and Work Responsibility Act of 1998 requires that all non-exempt (see definitions) public housing adult residents (18 or older) contribute eight (8) hours per month of community service (volunteer work) or participate in eight (8) hours of training, counseling, classes or other activities that help an individual toward self-sufficiency and economic independence. This is a requirement of the public housing lease.

### B. Definitions

**Community Service** – volunteer work which includes, but is not limited to:

- Work at a local institution, including but not limited to: school, child care center, hospital, hospice, recreation center, senior center, adult day care center, homeless shelter, indigent feeding program, cooperative food bank, etc.
- Work with a nonprofit organization such as: Parks and Recreation, United Way, Red Cross, Volunteers of America, Boy Scouts, Girl Scouts, Boys or Girls Clubs, 4-H Program, PAL, Garden Center, community clean-up programs, beautification programs, other counseling, aid, youth or senior organizations
- Work at the housing authority to help with litter control
- Work at the housing authority to help with children’s programs
- Work at the housing authority to help with senior programs
- Helping neighborhood groups with special projects
- Working through a resident organization to help other residents with problems
- Serving as an officer in a resident organization
- Serving on the Resident Advisory Board
- Caring for children of other residents so they may volunteer

**NOTE:** Political activity is excluded.



**Self-Sufficiency Activities** – activities that include, but are not limited to:

- Job readiness programs
- Job training programs
- GED classes
- Substance abuse or mental health counseling
- English proficiency or literacy (reading) classes
- Apprenticeships
- Budgeting and credit counseling
- Any kind of class that helps a person toward economic independence
- Student status at any school, college or vocation school

**Exempt Adult** – an adult member of the family who meets any of the following criteria:

- Is 62 years of age or older
- Is blind or a person with disabilities (as defined under section 216[i][I] or 1614 of the Social Security Act), and who certifies that because of this disability he or she is unable to comply with the service provisions, or is the primary caretaker of such an individuals
- Is working at least 30 hours per week
- Meets the requirements for being exempted from having to engage in a work activity under TANF or any other State welfare program including a State-administered welfare-to-work program
- Is a member of a family receiving assistance, benefits or services under TANF or any other State welfare program and has not been found to be in noncompliance with such program

### C. Requirements of the Program

1. The eight (8) hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.
2. At least eight (8) hours of activity must be performed each month. An individual may not skip a month and then double up the following month, unless special circumstances warrant special consideration. The housing authority will make the determination of whether to allow or disallow a deviation from the schedule based on a family's written request.
3. Family obligation:
  - At lease execution, all adult members (18 or older) of a public housing resident family must:
    - Sign a certification that they have received and read this policy and understand that if they are not exempt, failure to comply with the community service requirement will result in a nonrenewal of their lease; and
    - Declare if they are exempt. If exempt, they must complete the Exemption Form (Exhibit 11-3) and provide documentation of the exemption.
  - Upon written notice from the PHA, non-exempt family members must present complete documentation of activities performed during the applicable lease term. This documentation will include places for signatures of supervisors, instructors, or counselors, certifying to the number of hours contributed.
  - If a family member is found to be noncompliant at the end of the 12-month lease term, he or she, and the head of household, will be required to sign an agreement with the housing authority to make up the deficient hours over the next twelve (12) month period, as a condition of continued occupancy.
4. Change in exempt status:
  - If, during the twelve (12) month lease period, a non-exempt person becomes exempt, it is his or her responsibility to report this to the PHA and provide documentation of exempt status.
  - If, during the twelve (12) month lease period, an exempt person becomes non-exempt, it is his or her responsibility to report this to the PHA. Upon receipt of this information the PHA will provide the person with the appropriate documentation form(s) and a list of agencies in the community that provide volunteer and/or training opportunities.

#### **D. Authority Obligation**

1. To the greatest extent possible and practicable, the PHA will:
  - Provide names and contacts at agencies that can provide opportunities for residents, including residents with disabilities, to fulfill their community service obligations.
  - Provide in-house opportunities for volunteer work or self-sufficiency activities.
2. The PHA will provide the family with a copy of this policy, and all applicable exemption verification forms and community service documentation forms, at lease-up, lease renewal, when a family member becomes subject to the community service requirement during the lease term, and at any time upon the family's request.
3. Although exempt family members will be required to submit documentation to support their exemption, the PHA will verify the exemption status in accordance with its verification policies. The PHA will make the final determination as to whether or not a family member is exempt from the community service requirement. Residents may use the PHA's grievance procedure if they disagree with the PHA's determination.
4. Noncompliance of family member:
  - At least thirty(30) days prior to the end of the 12-month lease term, the PHA will begin reviewing the exempt or non-exempt status and compliance of family members;
  - If, at the end of the initial 12-month lease term under which a family member is subject to the community service requirement, the PHA finds the family member to be noncompliant, the PHA will not renew the lease unless:
    - The head of household and any other noncompliant resident enter into a written agreement with the PHA, to make up the deficient hours over the next twelve (12) month period; or
    - The family provides written documentation satisfactory to the PHA that the noncompliant family member no longer resides in the unit.
  - If, at the end of the next 12-month lease term, the family member is still not compliant, a 30-day notice to terminate the lease will be issued and the entire family will have to vacate, unless the family provides written documentation satisfactory to the PHA that the noncompliant family member no longer resides in the unit;
  - The family may use the PHA's grievance procedure to dispute the lease termination.

All adult family members must sign and date below, certifying that they have read and received a copy of this Community Service and Self-Sufficiency Policy.

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

**EXHIBIT 11-2: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(1) and Section 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE**

**Social Security Act:**

**216(i)(1):** Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term “disability” means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

**Section 1416 (excerpt):**

SEC. 1614. [42 U.S.C. 1382c] (a)(1) For purposes of this title, the term “aged, blind, or disabled individual” means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or

(ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

**EXHIBIT 11-3: PHA DETERMINATION OF EXEMPTION FOR COMMUNITY SERVICE**

Family: \_\_\_\_\_

Adult family member: \_\_\_\_\_

This adult family member meets the requirements for being exempted from the PHA's community service requirement for the following reason:

- 62 years of age or older. (*Documentation of age in file*)
- Is a person with disabilities and self-certifies below that he or she is unable to comply with the community service requirement. (*Documentation of HUD definition of disability in file*)

**Tenant certification:** I am a person with disabilities and am unable to comply with the community service requirement.

\_\_\_\_\_  
Signature of Family Member

\_\_\_\_\_  
Date

- Is the primary caretaker of such an individual in the above category. (*Documentation in file*)
- Is working at least 30 hours per week. (*Employment verification in file*)
- Is participating in a welfare-to-work program. (*Documentation in file*).
- Meets the requirements for being exempted from having to engage in a work activity under TANF or any other State welfare program, including a State-administered welfare-to-work program (*Documentation in file*)
- Is a member of a family receiving assistance, benefits or services under TANF or any other State welfare program and has not been found to be in noncompliance with such program. (*Documentation in file*)

\_\_\_\_\_  
Signature of Family Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of PHA Official

\_\_\_\_\_  
Date

# CHAPTER TWELVE

# TRANSFER POLICY

## Chapter 12

### TRANSFER POLICY

#### PART I: EMERGENCY TRANSFERS

##### 12-I.A. OVERVIEW

HUD categorizes certain actions as emergency transfers [PH Occ GB, p. 147]. The emergency transfer differs from a typical transfer in that it requires immediate action by the PHA.

In the case of a genuine emergency, it may be unlikely that the PHA will have the time or resources to immediately transfer a tenant. Due to the immediate need to vacate the unit, placing the tenant on a transfer waiting list would not be appropriate. Under such circumstances, if an appropriate unit is not immediately available, the PHA should find alternate accommodations for the tenant until the emergency passes, or a permanent solution, i.e., return to the unit or transfer to another unit, is reached.

##### 12-I.B. EMERGENCY TRANSFERS

If the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants, the PHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

###### PHA Policy

The following is considered an emergency circumstance warranting an immediate transfer of the tenant or family:

1. Emergency situations, which include but are not limited to health and safety threats. Temporary accommodations may be offered.

##### 12-I.C. EMERGENCY TRANSFER PROCEDURES

###### PHA Policy

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, the PHA will provide temporary accommodations to the tenant by arranging for temporary lodging at a hotel or similar location. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, the PHA will transfer the resident to the first available and appropriate unit after the temporary relocation.

Emergency transfers are mandatory for the tenant.

##### 12-I.D. COSTS OF TRANSFER

###### PHA Policy

The PHA will bear the reasonable costs of temporarily accommodating the tenant and of long term transfers, if any, due to emergency conditions.



## **PART II: PHA REQUIRED TRANSFERS**

### **12-II.A. OVERVIEW**

HUD regulations regarding transfers are minimal, leaving it up to the PHA to develop reasonable transfer policies.

The PHA may require that a resident transfer to another unit under some circumstances. For example, the PHA may require a resident to transfer to make an accessible unit available to a disabled family. The PHA may also transfer a resident in order to maintain occupancy standards based on family composition. Finally, a PHA may transfer residents in order to demolish or renovate the unit.

A transfer that is required by the PHA is an adverse action, and is subject to the notice requirements for adverse actions [24 CFR 966.4(e)(8)(i)].

### **12-II.B. TYPES OF PHA REQUIRED TRANSFERS**

#### PHA Policy

The types of transfers that may be required by the PHA, include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply with occupancy standards, transfers for demolition, disposition, revitalization, or rehabilitation, and emergency transfers as discussed in Part I of this chapter.

Transfers required by the PHA are mandatory for the tenant.

#### **Transfers to Make an Accessible Unit Available**

When a family is initially given an accessible unit, but does not require the accessible features, the PHA may require the family to agree to move to a non-accessible unit when it becomes available [24 CFR 8.27(b)].

#### PHA Policy

When a non-accessible unit becomes available, the PHA will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. The PHA may wait until a disabled resident requires the accessible unit before transferring the family that does not require the accessible features out of the accessible unit.

#### **Occupancy Standards Transfers**

The PHA may require a resident to move when a reexamination indicates that there has been a change in family composition, and the family is either overcrowded or over-housed according to PHA policy [24 CFR 960.257(a)(4)]. On some occasions, the PHA may initially place a resident in an inappropriately sized unit at lease-up, where the family is over-housed, to prevent vacancies. The public housing lease must include the tenant's agreement to transfer to an appropriately sized unit based on family composition [24 CFR 966.4(c)(3)].

#### PHA Policy

The PHA will transfer a family when the family size has changed and the family is now too large (overcrowded) or too small (over-housed) for the unit occupied.

For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

*Overcrowded:* the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, according to the chart in Section 5-I.B.

*Over-housed:* the family no longer qualifies for the bedroom size in which they are living based on the PHA's occupancy standards as described in Section 5-I.B.

The PHA may also transfer a family who was initially placed in a unit in which the family was over-housed to a unit of an appropriate size based on the PHA's occupancy standards, when the PHA determines there is a need for the transfer.

The PHA may elect not to transfer an over-housed family in order to prevent vacancies.

A family that is required to move because of family size will be advised by the PHA that a transfer is necessary and that the family has been placed on the transfer list.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies in Section 5-I.C. will only be required to transfer if it is necessary to comply with the approved exception.

### **Demolition, Disposition, Revitalizations, or Rehabilitation Transfers**

These transfers permit the PHA to demolish, sell or do major capital or rehabilitation work at a building site [PH Occ GB, page 148].

#### PHA Policy

The PHA will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. The PHA's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if allowed under Relocation Act provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

### **12-II.C. ADVERSE ACTION [24 CFR 966.4(e)(8)(i)]**

A PHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests a grievance hearing within the required timeframe, the PHA may not take action on the transfer until the conclusion of the grievance process.

### **12-II.D. COST OF TRANSFER**

#### PHA Policy

The PHA will bear the reasonable costs of transfers that the PHA requires, except that residents will be required to bear the cost of occupancy standards transfers.

The reasonable costs of transfers include the cost of packing, moving, and unloading.

The PHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, the PHA will collect information from companies in the community that provide these services.

The PHA will reimburse the family for eligible out-of-pocket moving expenses up to the PHA's established moving allowance.

### **PART III: TRANSFERS REQUESTED BY TENANTS**

#### **12-III.A. OVERVIEW**

HUD provides the PHA with discretion to consider transfer requests from tenants. The only requests that the PHA is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of the PHA. To avoid administrative costs and burdens, this policy limits the types of requests that will be considered by the PHA.

Some transfers that are requested by tenants should be treated as higher priorities than others due to the more urgent need for the transfer.

#### **12-III.B. TYPES OF RESIDENT REQUESTED TRANSFERS**

##### PHA Policy

It shall be the policy of the MMHA to permit transfers between units in public housing. Transfers shall be at the sole discretion of the Executive Director.

Generally transfers shall be limited to:

- Medical Reasons
- Family Composition Changes
- Employment Location Changes
- Disability Status
- Oversized Family
- Family Health Reasons
- Training or educational reasons

(Note: Transfers at the Morris House may include transfers from a 0 bedroom size to a 1 bedroom size and from the back of the building to the front of the building).

#### **12-III.C. ELIGIBILITY FOR TRANSFER**

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, the PHA may establish other standards for considering a transfer request [PH Occ GB, p. 150].

##### PHA Policy

All transfers must meet the following conditions:

- Must be a resident in good standing;
- Must be a resident with good housekeeping; and take care of their current apartment.

### **12-III.D. SECURITY DEPOSITS**

#### PHA Policy

When a family transfers from one unit to another, the PHA will transfer their security deposit to the new unit. The tenant will be billed for any maintenance or others charges due for the “old” unit.

### **12-III.E. COST OF TRANSFER**

#### PHA Policy

The resident will bear all of the costs of transfer s/he requests. However, in cases of documented financial hardship, the PHA will consider assuming the transfer costs when the transfer is done as a reasonable accommodation.

### **12-III.F. HANDLING OF REQUESTS**

#### PHA Policy

All transfers should be considered on a case by case basis. Transfers shall be limited to one per month and the move must be completed within two weekends.

Residents requesting a transfer to another unit or development will be required to submit a written request for transfer.

In case of a reasonable accommodation transfer, the PHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, the PHA will consider the transfer request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

The PHA will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family.

If the family does not meet the “good record” requirements under Section 12-III.C., the manager will address the problem and, until resolved, the request for transfer will be denied.

The PHA will respond within ten (10) business days of the submission of the family’s request. If the PHA denies the request for transfer, the family will be informed of its grievance rights.

## **PART IV: TRANSFER PROCESSING**

### **12-IV.A. OVERVIEW**

Generally, transfers should be placed on a transfer list and handled in the appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience disparate treatment.

## **12-IV.B. TRANSFER LIST**

### PHA Policy

Transfers will be processed in order of the date a family was placed on the transfer list, starting with the earliest date.

The Transfer list shall be maintained with the name of the family, reason for transfer and date of request.

With the approval of the executive director, the PHA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow the PHA to meet the demolition or renovation schedule.

Transfers will take precedence over waiting list admissions.

The transfer list shall contain the following data:

- Family Name
- Request Date
- Reason
- Type (Mandatory or Optional)
- Disposition

## **12-IV.C. TRANSFER OFFER POLICY**

### PHA Policy

Residents will receive one offer of a transfer.

When the transfer is required by the PHA, refusal of that offer without good cause will result in lease termination.

When the transfer has been requested by the resident, refusal of that offer without good cause will result in the removal of the household from the transfer list and the family must wait six months to reapply for another transfer.

## **12-IV.D. GOOD CAUSE FOR UNIT REFUSAL**

### PHA Policy

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

Inaccessibility to source of employment, education, or job training, children's day care, or an educational program for children with disabilities, so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.

The family demonstrates to the PHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court

orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.

A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member.

The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.

The unit has lead-based paint and the family includes children under the age of six.

The PHA will require documentation of good cause for unit refusals.

#### **12-IV.E. DECONCENTRATION**

##### PHA Policy

If subject to deconcentration requirements, the PHA will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve the PHA's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

#### **12-IV.F. REEXAMINATION POLICIES FOR TRANSFERS**

##### PHA Policy

The reexamination date will be changed to the first of the month in which the transfer took place.

# CHAPTER 13

## LEASE TERMINATIONS

## **Chapter 13 LEASE TERMINATIONS**

### **PART I: TERMINATION BY TENANT**

#### **13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]**

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or the PHA central office or sent by pre-paid first-class mail, properly addressed.

##### PHA Policy

If a family desires to move and terminate their tenancy with the PHA, they must give at least 30 calendar days advance written notice to the PHA of their intent to vacate. When a family must give less than 30 days notice due to circumstances beyond their control the PHA, at its discretion, may waive the 30 day requirement.

The notice of lease termination must be signed by the head of household, spouse, or cohead.

### **PART II: TERMINATION BY PHA – MANDATORY**

#### **13-II.A. OVERVIEW**

HUD requires the PHA to terminate the lease in certain circumstances. In other circumstances HUD requires the PHA to establish provisions for lease termination, but it is still a PHA option to determine, on a case-by-case basis, whether termination is warranted. For those tenant actions or failures to act where HUD requires termination, the PHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the PHA to terminate the lease.

#### **13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]**

The PHA must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

#### **13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]**

The PHA must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.



See Chapter 7 for a complete discussion of documentation requirements.

### **13-II.D. FAILURE TO PROVIDE SOCIAL SECURITY DOCUMENTATION [24 CFR 5.218(c) and 24 CFR 960.259(a)(3)]**

The PHA must terminate the lease if a resident family fails to provide the documentation or certification required for any family member who obtains a social security number, joins the family, or reaches 6 years of age. See Chapter 7 for a complete discussion of documentation and certification requirements.

### **13-II.E. FAILURE TO ACCEPT THE PHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]**

The PHA must terminate the lease if the family fails to accept the PHA's offer of a lease revision to an existing lease, provided the PHA has done the following:

- The revision is on a form adopted by the PHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The PHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The PHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to PHA policies for offering lease revisions.

### **13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]**

The PHA must immediately terminate the lease if the PHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

See Part 13-III.B. below for the HUD definition of *premises*.

### **13-II.G. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]**

The PHA is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

## **PART III: TERMINATION BY PHA – OTHER AUTHORIZED REASONS**

### **13-III.A. OVERVIEW**

Besides requiring PHAs to terminate the lease under the circumstances described in Part II, HUD requires the PHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require PHAs to terminate for such violations in all cases. The PHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the PHA may, as an

alternative to termination, require the exclusion of the culpable household member. The PHA must make policy decisions concerning these options.

In addition, HUD authorizes PHAs to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. The PHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of the PHA lease. In the development of the terms of the lease, the PHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords PHAs wide discretion in some areas, a broad range of policies could be acceptable.

The PHA, with some restrictions, also has the option to terminate the tenancies of families who are over income.

The PHA may consider alternatives to termination and must establish policies describing the criteria the PHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the PHA must take when terminating a family's lease.

### **MMHA Termination Policy**

1. General
  1. Rules, Regulations, Policies and Practices of HUD and the Authority shall be enforced.
  2. Violations shall result in denial or termination of assistance.
  3. Termination/denial of assistance may occur at any time there is grounds for termination (552) or denial.
  4. All references to "family" for terminations or violations include:
    - "any" family member
    - Guests/persons in unit (Drug/Criminal)
  5. Grounds for termination or denial are generally the same for both applicants or participants.
  6. Families that owe the Authority may not re-apply until the monies are repaid (i.e. no repayment agreements).
  7. The Authority shall determine if the family is in compliance with the provisions of the lease and/or program.
2. Penalty Period
  1. Families terminated or denied assistance shall not be eligible to re-apply until after the Penalty Period and all debts owed to the Authority are paid:
    - a. For Policy Violations, after one (1) year has elapsed from the violation; and
    - b. For violations involving monies owed the Authority, after all monies are repaid;
    - c. For Drug/Criminal violations, three (3) years has elapsed from the date of occurrence.
  2. Repeat offenders and/or repeat behavior violations shall not be eligible to re-apply until three (3) consecutive years of clean records has occurred.
  3. Specific Terminations
    - A. Citizenship Terminations:

An applicant/participant may be terminated if:

      - Evidence of citizenship is not provided;

- Evidence of citizenship is not verified and no INS appeal started
- B. No Payment Terminations (Zero Subsidy)
  1. A participant shall be terminated if no payment is made on their behalf.
  2. Zero subsidy is when 30% of family income equals gross rent.
- C. Drug/Criminal Terminations:
  1. Assistance shall be denied or terminated to any family that engages in drug-related or violent criminal activity within the previous 3 years in any federally assisted housing by:
    - Any family member
    - Any guest/person under control of family member
    - On or near or in the vicinity of the premises.
  2. Definitions
    - a. “Engages” means preponderance of evidence, not arrest or conviction that an illegal activity occurred.
    - b. “Violent” means any use or threatened use of physical force against a person or property- i.e. violent felonies and/or misdemeanors.
    - c. “Illegal” means any violation of federal/state law.
    - d. “Drug-Related” means manufacture, sale, distribution, possession, or use of a controlled substance as defined in Section 102 of the Controlled Substance Act (21USC802).
  3. Threatened abusive or violent behavior toward Authority personnel is grounds for denial or termination.
- D. Past Assistance
  1. Past assistance termination of a Voucher and/or Public Housing eviction shall be grounds for denial or termination of assistance.
  2. Violations of family obligations (982.551) as stated on the Voucher or in the Authority’s Family Obligation form shall be grounds for denial/termination.
- E. Corrupt or Criminal Acts Terminations
  1. “Corrupt Act” shall mean, but not limited to, any misrepresentation or misleading statements—intentional or unintentional—that affect eligibility, rent, determination, family composition, living in unit composition, income status, and/or failure to fully and accurately disclose any and all information required by the Authority.  
NOTE: Unauthorized persons fall into this category
  2. Corrupt Act shall also mean refusal to supply any and all documents necessary and/or requested by the Authority for verification purposes in a timely manner, i.e. by the due date on the letter sent.
  3. Corrupt Act shall result in recovery of all monies due the Authority before the individuals involved are allowed to apply for any subsidized program;
  4. Corrupt Act, particularly non-monetary, shall result in suspension for three (3) years before re-applying is allowed.
- F. Policy Termination
  1. Incomplete data submittal of the required eligibility items is the responsibility of the family, if incomplete; the appointment shall be stopped and rescheduled. If reoccurrence, cancel.

2. Missed appointments and/or incomplete submittal of required documents is wasteful and irresponsible, unless such is outside family control.
3. Missed appointments that are not called in before they are missed shall not be rescheduled. Missed appointments that are called in before they are missed shall be rescheduled at the convenience of the Authority.
4. A participant shall be sent two (2) warnings, which establishes a pattern of “repeated” behavior. With the third Warning Letter the participant shall be terminated.

The applicant shall be sent one Warning Letter for such failure to act on their part. The Warning Letter shall contain the required time to resubmit information, and if not provided by that date, the applicant is canceled.

5. Procedural violations shall result in a penalty of termination and suspension for one year before re-applying to the program.

#### G. HQS Violations

1. Violations of the HQS that are renter caused shall be given:
  - a. 24 hours to repair life threatening or emergency violations
  - b. 30 days to repair all other violations
2. If not corrected within the required time, the family shall be cancelled.

#### H. Unauthorized Persons

1. Only persons listed on the Lease may reside in or use the dwelling in any way, or use the dwelling as a principal place of residency, or use the unit in a regular way. All other persons are unauthorized.
2. Visitors are acceptable as long as those staying over one week are reported to the Authority and given permission to stay for a definite period of time. All unreported persons are unauthorized.
3. Unauthorized persons shall result in the termination of further assistance. Amounts owed to the Authority shall be calculated and charged to the participant.

#### I. Owner Terminations

1. Owners may evict participants for “good cause” (serious or repeated violations of the lease).
2. Good cause violations, once verified by the Authority, shall result in termination of assistance.

#### 4 Prohibitions

1. No family/person shall be eligible for assistance if convicted of:
  - Methamphetamine involvement;
  - Drug Trafficking
2. No family/person shall be eligible for assistance for lifetime sexual offenses—i.e. Sexual Predator Label.

#### 5 Procedures

1. Document the violations and place in file (applicant/participant)
2. Send proper notification and termination letter to family;
  - Notice stating reason/explanation
  - Right to Review/Hearing, as appropriate
3. Record in Casenotes in Chronology Chart (Participant)

4. Record on McBee Card (applicant/participant)
  - a. Record incident or termination reason or eviction
  - b. Record date of occurrence
  - c. Record projected date can re-apply, i.e. period of violation

e.g Program	Violation	Date Reapply	Amount Owed
P/H	“Eviction”	3 years	0.00
S/8	“Drug”	3 years	

### **13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)]**

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require PHAs to terminate for such violations in all cases, therefore PHA policies are needed.

#### ***Definitions* [24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

*Covered person* means a tenant, any member of the tenant’s household, a guest, or another person under the tenant’s control.

*Dating violence* is defined in section 3-III.F.

*Domestic violence* is defined in section 3-III.F.

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

*Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.

*Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

*Household* means the family and PHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

*Immediate family member* is defined in section 3-III.F.

*Other person under the tenant’s control* means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant’s control*.

*Premises* means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

*Stalking* is defined in section 3-III.F.

*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.

**Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]**

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

PHA Policy

The PHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

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

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

**Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]**

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

PHA Policy

The PHA will terminate the lease if the PHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

### **Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]**

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

#### PHA Policy

The PHA will terminate the lease if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

### **13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY**

#### **Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]**

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that the PHA may consider exclusion of the culpable household member. Such an alternative can be used, by PHA policy, for any other reason where such a solution appears viable.

#### PHA Policy

The PHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon PHA request.

#### **Repayment of Family Debts**

#### PHA Policy

If a family owes amounts to the PHA, as a condition of continued occupancy, the PHA will require the family to repay the full amount.

### **13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY**

A PHA that has grounds to terminate a tenancy is not required to do so, except as explained in Part II of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

### **Evidence [24 CFR 982.553(c)]**

For criminal activity, HUD permits the PHA to terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

#### PHA Policy

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

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

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

### **Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]**

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the PHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

#### PHA Policy

The PHA will consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

The seriousness of the offending action, especially with respect to how it would affect other residents

The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in section 13-III.F) a victim of domestic violence, dating violence, or stalking

The effects that the eviction will have on other family members who were not involved in the action or failure to act

The effect on the community of the termination, or of the PHA's failure to terminate the tenancy

The effect of the PHA's decision on the integrity of the public housing program

The demand for housing by eligible families who will adhere to lease responsibilities

The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action



The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future

In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family

### **Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]**

HUD authorizes PHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

#### PHA Policy

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the PHA will consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

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

### **Nondiscrimination Limitation [24 CFR 966.4(l)(5)(vii)(F)]**

The PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

### **13-III.F. PROHIBITION AGAINST TERMINATING TENANCY OF VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING [Pub.L. 109-162 and 109-271]**

The Violence against Women Reauthorization Act of 2005 (VAWA), provides that "criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate family member of the tenant's family is the victim or threatened victim of that abuse." VAWA further provides that incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed either as serious or repeated violations of the lease by the victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence.

VAWA does not limit the PHA's authority to terminate the tenancy of any tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property.

## Victim Documentation

### PHA Policy

When a tenant family is facing lease termination because of the actions of a tenant, household member, guest, or other person under the tenant's control and a tenant or immediate family member of the tenant's family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, or stalking, the PHA will require the individual to submit documentation affirming that claim.

The documentation must include two elements:

A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking

One of the following:

A police or court record documenting the actual or threatened abuse

A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The required certification and supporting documentation must be submitted to the PHA within 14 business days after the individual claiming victim status receives a request for such certification. The PHA, owner or manager will be aware that the delivery of the certification form to the tenant in response to an incident via mail may place the victim at risk, e.g., the abuser may monitor the mail. The PHA may require that the tenant come into the office to pick up the certification form and will work with tenants to make delivery arrangements that do not place the tenant at risk. This 14-day deadline may be extended at the PHA's discretion. If the individual does not provide the required certification and supporting documentation within 14 business days, or the approved extension period, the PHA may proceed with assistance termination.

The PHA also reserves the right to waive these victim verification requirements and accept only a self-certification from the victim if the PHA deems the victim's life to be in imminent danger.

Once a victim has completed certification requirements, the PHA will continue to assist the victim and may use bifurcation as a tool to remove a perpetrator from assistance. Owners will be notified of their legal obligation to continue housing the victim, while using lease bifurcation to remove the perpetrator from a unit. The PHA will make all best efforts to work with victims of domestic violence before terminating the victim's assistance.

In extreme circumstances when the PHA can demonstrate an actual and imminent threat to other participants or those employed at or providing service to the property if the participant's (including the victim's) tenancy is not terminated, the PHA will bypass the standard process and proceed with the immediate termination of the family's assistance.

### **Terminating or Evicting a Perpetrator of Domestic Violence**

Although VAWA provides protection from termination for victims of domestic violence, it does not provide protection for perpetrators. In fact, VAWA gives the PHA the explicit authority to bifurcate a lease, or to remove a household member from a lease, "in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant." 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 for eviction, lease termination, or termination of assistance [Pub.L. 109-271].

#### PHA Policy

When the actions of a tenant or other family member result in a determination by the PHA to terminate the family's lease and another family member claims that the actions involve criminal acts of physical violence against family members or others, the PHA will request that the victim submit the above required certification and supporting documentation in accordance with the stated time frame. If the certification and supporting documentation are submitted within the required time frame or any approved extension period, the PHA will bifurcate the lease and evict or terminate the occupancy rights of the perpetrator. If the victim does not provide the certification and supporting documentation, as required, the PHA will proceed with termination of the family's lease.

If the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant's tenancy is not terminated, the PHA will bypass the standard process and proceed with the immediate termination of the family.

### **PHA Confidentiality Requirements**

All information provided to the PHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

## **PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING**

### **13-IV.A. OVERVIEW**

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

### **13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]**

HUD authorizes PHAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. PHA policy determines when the PHA will conduct such checks.

#### PHA Policy

The PHA will conduct criminal records checks when it has come to the attention of the PHA, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

The PHA may not pass along to the tenant the costs of a criminal records check.

### **13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]**

In conducting criminal records checks, if the PHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if the PHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

#### PHA Policy

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the PHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given 10 business days from the date of the PHA notice, to dispute the accuracy and relevance of the information. If the family does not contact the PHA to

dispute the information within that 10 business day period, the PHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

#### **13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]**

##### **Form, Delivery, and Content of the Notice**

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine PHA documents directly relevant to the termination or eviction. If the PHA does not make the documents available for examination upon request by the tenant, the PHA may not proceed with the eviction [24 CFR 996.4(m)].

When the PHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the PHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

When the PHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or for a drug-related criminal activity on or off the premises.

##### PHA Policy

The PHA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first-class mail the same day.

All notices of lease termination will include a statement of the protection against termination provided by VAWA for victims of domestic violence, dating violence, or stalking. Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies in Section 13-III.F.

### **Timing of the Notice [24 CFR 966.4(l)(3)(i)]**

The PHA must give written notice of lease termination of:

- 14 calendar days in the case of failure to pay rent
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days)

If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened

If any member of the household has engaged in any drug-related criminal activity or violent criminal activity

If any member of the household has been convicted of a felony

- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

#### PHA Policy

The PHA will give written notice of 14 calendar days for nonpayment of rent. For all other lease terminations the PHA will give 30 days written notice or, if state or local law allows less than 30 days, such shorter notice will be given.

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

### **Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]**

When the PHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

#### PHA Policy

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

### **Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and

procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for the PHA's informal hearing procedures.

#### **13-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]**

Eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The PHA may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

##### PHA Policy

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the PHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the PHA will seek the assistance of the court to remove the family from the premises as per state and local law.

The PHA may not proceed with an eviction action if the PHA has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

#### **13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]**

When the PHA evicts an individual or family for criminal activity, including drug-related criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

#### **13-IV.G. RECORD KEEPING**

For more information concerning general record keeping, see Chapter 16.

##### PHA Policy

A written record of every termination and/or eviction will be maintained by the PHA at the development where the family was residing, and will contain the following information:

Name of resident, number and identification of unit occupied

Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently

Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail

(other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)

Date and method of notifying the resident

Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions.



# CHAPTER 14

# GRIEVANCES AND

# APPEALS

## Chapter 14

### GRIEVANCES AND APPEALS

#### PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

##### 14-I.A. OVERVIEW

When the PHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses the PHA policies necessary to respond to applicant appeals through the informal hearing process.

##### 14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants in the PHA grievance procedure [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide the applicant a means to hear the details of the reasons for rejection, and an opportunity to present evidence to the contrary if available, and to claim mitigating circumstances if possible.

##### Use of Informal Hearing Process

While the PHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, the PHA could make the informal hearing process available to applicants who wish to dispute other PHA actions that adversely affect them.

##### PHA Policy

The PHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

##### Notice of Denial [24 CFR 960.208(a)]

The PHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the PHA decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.G for details concerning this requirement.

## **Scheduling an Informal Hearing**

### PHA Policy

A request for an informal hearing must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's notification of denial of admission.

Except as provided in Section 3-III.F, the PHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.

## **Conducting an Informal Hearing [PH Occ GB, p. 58]**

### PHA Policy

The informal hearing will be conducted by a person other than the one who made the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of the PHA.

The person conducting the informal hearing will make a recommendation to the PHA, but the PHA is responsible for making the final decision as to whether admission should be granted or denied.

## **Informal Hearing Decision [PH Occ GB, p. 58]**

### PHA Policy

The PHA will notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the PHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice

The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in PHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.

The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

### **Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]**

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the PHA must consider such accommodations. The PHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

## **PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS**

### **14-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with 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.

## **United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]**

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and proof of mailing.

### PHA Policy

The PHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the PHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

### PHA Policy

The PHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

## **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

### ***Informal Hearing Officer***

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

### PHA Policy

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, the PHA is still obligated to provide oral translation services in accordance with its LEP Plan.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

#### **PHA Policy**

The PHA will not provide a transcript of an audio taped informal hearing.

### ***Hearing Decision***

The PHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

### **Retention of Documents [24 CFR 5.514(h)]**

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

### **Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

### **PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS**

#### **14-III.A. REQUIREMENTS [24 CFR 966.52]**

PHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PHA action or failure to act involving the lease or PHA policies which adversely affect their rights, duties, welfare, or status.

The PHA grievance procedure must be included in, or incorporated by reference in, the lease.

##### PHA Policy

The PHA grievance procedure will be incorporated by reference in the tenant lease.

The PHA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Comments submitted must be considered by the PHA before adoption of any grievance procedure changes by the PHA.

##### PHA Policy

Residents and resident organizations will have 30 calendar days from the date they are notified by the PHA of any proposed changes in the PHA grievance procedure, to submit written comments to the PHA.

The PHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

#### **14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]**

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance** – any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant’s lease or PHA regulations which adversely affect the individual tenant’s rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to the PHA or at the project management office
- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:

- Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
- Right of the tenant to be represented by counsel
- Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
- A decision on the merits
- **Hearing Officer/Panel** – a person/panel selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto
- **Tenant** – the adult person (or persons) (other than a live-in aide)
  - Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
  - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit
- **Resident Organization** – includes a resident management corporation

#### **14-III.C. APPLICABILITY [24 CFR 966.51]**

Potential grievances could address most aspects of a PHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to the PHA. It is not applicable to disputes between tenants not involving the PHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the PHA.

If HUD has issued a due process determination, a PHA may exclude from the PHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, PHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, but may use expedited grievance procedures, as described in Section 14-III.E. below, to deal with the first two of the above three categories of lease terminations.

If HUD has issued a due process determination, the PHA may evict through the state/local judicial eviction procedures. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's grievance procedure as described above.

#### PHA Policy



The PHA is not located in a due process state, therefore it must grant opportunity for grievance hearings for all lease terminations, regardless of cause.

See Chapter 13 for related policies on the content of termination notices.

#### **14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]**

HUD regulations state that any grievance must be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

##### PHA Policy

The PHA will accept requests for an informal settlement of a grievance either orally or in writing, to the PHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request the PHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, the PHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in the PHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

##### PHA Policy

The PHA will prepare a summary of the informal settlement within 5 business days; one copy to be given to the tenant and one copy to be retained in the PHA's tenant file.

For PHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.

#### **14-III.E. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55]**

##### **Requests for Hearing and Failure to Request [24 CFR 966.55(a), (c), and (d)]**

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer/panel, the hearing officer/panel may waive this provision [24 CFR 966.55(d)].

The complainant must submit the request in writing for a grievance hearing within a reasonable time after receipt of the summary of informal discussion [24 CFR 966.55(a)]. The request must specify the reasons for the grievance and the action or relief sought.

##### PHA Policy

The resident must submit a written request for a grievance hearing to the PHA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the PHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding [24 CFR 966.55(c)].

#### **Escrow Deposits [24 CFR 966.55(e)]**

Before a hearing is scheduled in any grievance involving the amount of rent that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer/panel.

The PHA must waive the requirement for an escrow deposit where the family has requested a financial hardship exemption from minimum rent requirements or is grieving the effect of welfare benefits reduction in calculation of family income [24 CFR 5.630(b)(3)].

Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

#### PHA Policy

The PHA will not waive the escrow requirement for grievances involving rent amounts except where required to do so by regulation.

#### **Scheduling of Hearings [24 CFR 966.55(f)]**

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer/panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PHA official.

#### PHA Policy

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the PHA.

The PHA may wish to permit the tenant to request to reschedule a hearing for good cause.

#### PHA Policy

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing

date. At its discretion, the PHA may request documentation of the “good cause” prior to rescheduling the hearing.

#### **14-III.F. SELECTION OF HEARING OFFICER/PANEL [24 CFR 966.55(b)]**

The grievance hearing must be conducted by an impartial person or persons appointed by the PHA, other than the person who made or approved the PHA action under review, or a subordinate of such person.

##### PHA Policy

PHA grievance hearings will be conducted by a single hearing officer and not a panel. The PHA has designated the following to serve as hearing officers:

*Teresa Fry- Occupancy Specialist*

*Demelza Fair- Program Specialist*

*Jack Baird, Executive Director*

The PHA must determine the methodology for appointment of the hearing officer and it must be stated in the grievance procedure.

##### PHA Policy

The PHA will appoint a person who has been selected in the manner required under the grievance procedure. Efforts will be made to assure that the person selected is not a friend, nor enemy, of the complainant and that they do not have a personal stake in the matter under dispute or will otherwise have an appearance of a lack of impartiality.

The PHA must consult with resident organizations before a person is appointed as a hearing officer or hearing panel member. Comments from the resident organizations must be considered before making the appointment.

#### **14-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]**

##### **Rights of Complainant [24 CFR 966.56(b)]**

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant’s expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

##### PHA Policy

The tenant will be allowed to copy any documents related to the hearing.

The right to be represented by counsel or other person chosen as the tenant’s representative and to have such person make statements on the tenant’s behalf.

### PHA Policy

Hearings may be attended by the following applicable persons:

A PHA representative(s) and any witnesses for the PHA

The tenant and any witnesses for the tenant

The tenant's counsel or other representative

Any other person approved by the PHA as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

### **Decision without Hearing [24 CFR 966.56(c)]**

The hearing officer/panel may render a decision without proceeding with the hearing if the hearing officer/panel determines that the issue has been previously decided in another proceeding.

### **Failure to Appear [24 CFR 966.56(d)]**

If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer/panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the PHA must be notified of the determination by the hearing officer/panel: Provided, That a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

### PHA Policy

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance the Tenant shall be terminated from the program.

### **General Procedures [24 CFR 966.56(e), (f), and (g)]**

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed [24 CFR 966.56(e)].

The hearing must be conducted informally by the hearing officer/panel. The PHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint and question any witnesses. In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings [24 CFR 966.56(f)].

#### PHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If the PHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine PHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the PHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The hearing officer/panel must require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer/panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate [24 CFR 966.56(f)].

The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(g)].

#### PHA Policy

If the complainant would like the PHA to record the proceedings by audiotape, the request must be made to the PHA by 12:00 p.m. on the business day prior to the hearing.

The PHA will consider that an audio tape recording of the proceedings is a transcript.

### **Accommodations of Persons with Disabilities [24 CFR 966.56(h)]**

The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of the PHA's responsibilities pertaining to reasonable accommodation.

### **14-III.H. DECISION OF THE HEARING OFFICER/PANEL [24 CFR 966.57]**

The hearing officer/panel must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the tenant and the PHA. The PHA must retain a copy of the decision in the tenant's folder. A copy of the decision, with all names and identifying references deleted, must also be maintained on file by the PHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel [24 CFR 966.57(a)].

#### PHA Policy

In rendering a decision, the hearing officer will consider the following matters:

**PHA Notice to the Family:** The hearing officer will determine if the reasons for the PHA's decision are factually stated in the notice.

**Discovery:** The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with PHA policy.

**PHA Evidence to Support the PHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the PHA's conclusion.

**Validity of Grounds for Termination of Tenancy (when applicable):** The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

The hearing officer will issue a written decision to the family and the PHA no later than 10 business days after the hearing. The report will contain the following information:

#### **Hearing information:**

Name of the complainant

Date, time and place of the hearing

Name of the hearing officer

Name of the PHA representative(s)

Name of family representative (if any)

Names of witnesses (if any)

**Background:** A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision.

**Order:** The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct the PHA to restore the family's status.

## **Procedures for Further Hearing**

### PHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PHA will take effect and another hearing will not be granted.

## **Final Decision [24 CFR 966.57(b)]**

The decision of the hearing officer/panel is binding on the PHA which must take the action, or refrain from taking the action cited in the decision unless the PHA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer/panel is contrary to Federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA

### PHA Policy

When the PHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the PHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer/panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].



# CHAPTER 15

## PROGRAM

## INTEGRITY

**Chapter 15**  
**PROGRAM INTEGRITY**

**PART I: PREVENTING, DETECTING, AND  
INVESTIGATING ERRORS AND PROGRAM ABUSE**

**15-I.A. PREVENTING ERRORS AND PROGRAM ABUSE**

PHA Policy

The PHA anticipates that the vast majority of families and PHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the PHA's program is administered effectively and according to the highest ethical and legal standards, the PHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The PHA will provide each applicant and resident with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

The PHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The PHA will discuss program compliance and integrity issues. At the conclusion of all program orientation sessions, the family representative will be required to sign a program briefing certificate to confirm that all rules and pertinent regulations were explained to them.

The PHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

PHA staff will be required to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.

The PHA will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family member.

The PHA will provide each PHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

**15-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, the PHA will use a variety of activities to detect errors and program abuse.

## **Quality Control and Analysis of Data**

### PHA Policy

The PHA will employ a variety of methods to detect errors and program abuse, including:

The PHA routinely will use available sources of up-front income verification to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The PHA will compare family-reported income and expenditures to detect possible unreported income.

## **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all PHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the PHA of errors and potential cases of program abuse.

### PHA Policy

The PHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the PHA's error detection and abuse prevention efforts.

## **Individual Reporting of Possible Errors and Program Abuse**

### PHA Policy

The PHA will encourage staff, residents, and the public to report possible program abuse.

## **15-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **When the PHA Will Investigate**

#### PHA Policy

The PHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the PHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The PHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

### **Consent to Release of Information [24 CFR 960.259]**

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require applicant/resident families to give consent to the release of additional information.

## **Analysis and Findings**

### PHA Policy

The PHA will base its evaluation on a preponderance of the evidence collected during its investigation.

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

For each investigation the PHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the PHA, and (3) what corrective measures or penalties will be assessed.

## **Consideration of Remedies**

All errors and instances of program abuse must be corrected prospectively. Whether the PHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

### PHA Policy

In the case of family-caused errors or program abuse, the PHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

## **Notice and Appeals**

### PHA Policy

The PHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the PHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing (see Chapter 14).

## **PART II: CORRECTIVE MEASURES AND PENALTIES**

### **15-II.A. UNDER- OR OVERPAYMENT**

An under- or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement to a family.

#### **Corrections**

Whether the incorrect rental determination is an overpayment or underpayment, the PHA must promptly correct the tenant rent and any utility reimbursement prospectively.

### PHA Policy

Increases in the tenant rent will be implemented only after the family has received 30 days notice.

Any decreases in tenant rent will become effective the first of the month following the discovery of the error.

### **Reimbursement**

Whether the family is required to reimburse the PHA or the PHA is required to reimburse the family depends upon which party is responsible for the incorrect payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### **15-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

General administrative requirements for participating in the program are discussed throughout the ACOP. This section deals specifically with errors and program abuse by family members.

An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

#### **Family Reimbursement to PHA**

##### PHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. If the family fails to repay the amount owed, the PHA will terminate the family's lease in accordance with the policies in Chapter 13.

#### **PHA Reimbursement to Family**

##### PHA Policy

The PHA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

### **Prohibited Actions**

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to the PHA [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to the PHA [24 CFR 960.259(a)(4)].
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income [24 CFR 966.4(1)(2)(iii)(C)].

##### PHA Policy

Any of the following will be considered evidence of family program abuse:

Offering bribes or illegal gratuities to the PHA Board of Commissioners, employees, contractors, or other PHA representatives

Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to the PHA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents

Intentional misreporting of family information or circumstances (e.g., misreporting of income or family composition)

Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

Admission of program abuse by an adult family member

The PHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

### **Penalties for Program Abuse**

In the case of program abuse caused by a family the PHA may, at its discretion, impose any of the following remedies.

- The PHA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to PHA).
- The PHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 13 (for residents).
- The PHA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.
- The PHA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

### **15-II.C. PHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

#### **Repayment to the PHA**

The family is not required to repay an underpayment of rent if the error or program abuse is caused by PHA staff.

#### **PHA Reimbursement to Family**

##### 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 or staff program abuse.

## **Prohibited Activities**

### PHA Policy

Any of the following will be considered evidence of program abuse by PHA staff:

Failing to comply with any public housing program requirements for personal gain

Failing to comply with any public housing program requirements as a result of a conflict of interest relationship with any applicant or resident

Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to the 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 public housing funds

Destroying, concealing, removing, or inappropriately using any records related to the public housing program

Committing any other corrupt or criminal act in connection with any federal housing program

## **15-II.D. CRIMINAL PROSECUTION**

### PHA Policy

When the PHA determines that program abuse by a family or PHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, the PHA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the public housing program will be referred to the appropriate local, state, or federal entity.

## **15-II.E. FRAUD AND PROGRAM ABUSE RECOVERIES**

PHAs who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin eviction proceedings against a family may retain 100 percent of program funds that the PHA recovers [Notice PIH 2005-7 (HA)].

If the PHA does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through the PHA's grievance process.

# CHAPTER 16

## PROGRAM ADMINISTRATION



## Chapter 16

### PROGRAM ADMINISTRATION

#### PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]

##### 16-I.A. OVERVIEW

PHAs must establish allowances for PHA-furnished utilities for all check metered utilities and for resident-purchased utilities for all utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

PHAs must also establish surcharges for excess consumption of PHA-furnished utilities [24 CFR 965.506].

The PHA must maintain a record that documents the basis on which utility allowances and scheduled surcharges are established and revised, and the record must be made available for inspection by residents [24 CFR 965.502(b)].

##### 16-I.B UTILITY ALLOWANCES

The PHA must establish separate allowances for each utility and for each category of dwelling units the PHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of a PHA in establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment [24 CFR 965.505].

Utilities include gas, electricity, fuel for heating, water, sewerage, and solid waste disposal for a dwelling unit. In addition, if the PHA does not furnish a range and refrigerator, the family must be granted a utility allowance for the range and refrigerator they provide [24 CFR 965.505].

Costs for telephone, cable/satellite TV, and internet services are not considered utilities [PH Occ GB, p. 138].

Utility allowance amounts will vary by the rates in effect, size and type of unit, climatic location and sitting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage [PH Occ GB, p. 138].

Chapter 14 of the *PH Occupancy Guidebook* provides detailed guidance to the PHA about establishing utility allowances.

##### **Air-Conditioning**

“If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or check meters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning but cannot be check metered, residents are to be surcharged in accordance with 965.506. If an air conditioning system does not

provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.” [24 CFR 965.505(e)].

PHA Policy

The PHA [has/has not] installed air-conditioning.

**Utility Allowance Revisions [24 CFR 965.507]**

The PHA must review at least annually the basis on which utility allowances have been established and must revise the allowances if necessary in order to adhere to the standards for establishing utility allowances that are contained in 24 CFR 965.505.

The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change, and is required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which the allowance was based.

Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account became effective.

PHA Policy

Between annual reviews of utility allowances, the PHA will only revise its utility allowances due to a rate change, when required to by the regulation.

**16-I.C. SURCHARGES FOR PHA-FURNISHED UTILITIES [24 CFR 965.506]**

For dwelling units subject to allowances for PHA-furnished utilities where check meters have been installed, the PHA must establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis or for stated blocks of excess consumption, and must be based on the PHA’s average utility rate. The basis for calculating the surcharges must be described in the PHA’s schedule of allowances. Changes in the amount of surcharges based directly on changes in the PHA’s average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

For dwelling units served by PHA-furnished utilities where check meters have not been installed, the PHA must establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

PHA Policy

The PHA [does/does not] have PHA-furnished utilities.

**16-I.D. NOTICE REQUIREMENTS [965.502]**

The PHA must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and must:

- Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.
- Describe the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.
- Notify residents of the place where the PHA's documentation on which allowances and surcharges are based is available for inspection.
- Provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.

### **16-I.E. REASONABLE ACCOMMODATION [24 CFR 965.508]**

On request from a family that includes a disabled or elderly person, the PHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family [PH Occ GB, p. 172].

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

## **PART II: ESTABLISHING FLAT RENTS AND PUBLIC HOUSING MAXIMUM RENTS**

### **16-II.A. OVERVIEW**

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Public housing maximum rents are needed to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].

This part discusses how the PHA establishes and updates flat rents and public housing maximum rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and public housing maximum rents are discussed in Chapter 6.

### **16-II.B. FLAT RENTS [24 CFR 960.253(b)]**

#### **Establishing Flat Rents**

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. The flat rent should be equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

The PHA must use a reasonable method to determine flat rents. In determining flat rents, PHAs must consider the following:

- Location
- Quality
- Unit size
- Unit type
- Age of property
- Amenities at the property and in immediate neighborhood
- Housing services provided
- Maintenance provided by the PHA
- Utilities provided by the PHA

### **Review of Flat Rents**

The PHA must ensure that flat rents continue to mirror market rent values [24 CFR 960.253(b)].

#### PHA Policy

The PHA will review flat rents on an annual basis, and adjust them as necessary to ensure that flat rents continue to mirror market rent values.

### **Posting of Flat Rents**

#### PHA Policy

The PHA will publicly post the schedule of flat rents in a conspicuous manner in the applicable PHA or project office.

### **Documentation of Flat Rents [24 CFR 960.253(b)(5)]**

The PHA must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by the PHA in accordance with this method.

## **16-II.C. PUBLIC HOUSING MAXIMUM RENTS**

### **Establishing Public Housing Maximum Rents**

PHAs are prohibited from making financial assistance available to persons who are not citizens or nationals of the United States, and to those who do not have eligible immigration status [24 CFR 5.500]. Therefore, in order to assist mixed families, PHAs must prorate assistance. Public housing maximum rents are needed in order to calculate the tenant rent for a mixed family.

The public housing maximum rent is based on value of the 95th percentile of the total tenant payment (TTP) for each tenant within the PHA. PHAs may calculate a maximum rent on either a PHA- or project wide basis. A separate maximum rent can be provided for each separate project or projects may be combined into logical groups, if appropriate. HUD recommends that a single project basis be avoided for a project unless at least 50 dwelling units are involved.

PHAs may use the “direct comparison” or the “unit distribution” method for establishing the public housing maximum rents for each unit size. Appendix H, of Guidebook 7465.G, Restrictions on Assistance to Noncitizens provides detailed guidance on how to establish public housing maximum rents using the methodologies identified above.

## **Review of Public Housing Maximum Rents**

### PHA Policy

The PHA will recalculate the public housing maximum rents on an annual basis.

## **Posting of Public Housing Maximum Rents**

### PHA Policy

The PHA will publicly post the schedule of public housing maximum rents in a conspicuous manner in the applicable PHA or project office.

## **Documentation of Public Housing Maximum Rents**

### PHA Policy

The PHA will maintain records that document how the PHA determined the 95th percentile of TTP, whether the maximum rent was determined PHA-wide, project-wide, or with groupings of projects, and the methodology used to determine maximum rents for each unit size.

## **PART III: FAMILY DEBTS TO THE PHA**

### **16-III.A. OVERVIEW**

This part describes the PHA's policies for recovery of monies that have been underpaid by families.

#### PHA Policy

When an action or inaction of a resident family results in the underpayment of rent or other amounts, the PHA holds the family liable to return any underpayments to the PHA.

The PHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments. The term *repayment agreement* refers to a formal document signed by a tenant and provided to the PHA in which a tenant acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

When a family refuses to repay monies owed to the PHA, the PHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil law suit
- State income tax set-off program

### **16-III.B. REPAYMENT POLICY**

#### **Family Debts to the PHA**

### PHA Policy

Any amount due to the PHA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, the PHA will terminate the family's tenancy in accordance with the policies in Chapter 13. The PHA will also pursue other modes of collection.

## **Repayment Agreement Guidelines**

### ***Down Payment Requirement***

#### PHA Policy

Prior to the execution of a repayment agreement, the family must pay 10 percent of the balance owed to the PHA.

### ***Payment Thresholds***

#### PHA Policy

Amounts between \$3,000 and the Federal or State threshold for criminal prosecution must be repaid within 36 months.

Amounts between \$2,000 and \$2,999 must be repaid within 30 months.

Amounts between \$1,000 and \$1,999 must be repaid within 24 months.

Amounts under \$1,000 must be repaid within 12 months.

### ***Execution of the Agreement***

#### PHA Policy

The head of household and spouse/cohead (if applicable) must sign the repayment agreement.

### ***Due Dates***

#### PHA Policy

All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.

### ***Non-Payment***

#### PHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the PHA, the PHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the PHA will terminate tenancy in accordance with the policies in Chapter 13.

If a family receives three delinquency notices for unexcused late payments in a 12 month period, the repayment agreement will be considered in default, and the PHA will terminate tenancy in accordance with the policies in Chapter 13.

***No Offer of Repayment Agreement***

PHA Policy

The PHA will not enter into a repayment agreement if there is already a repayment agreement in place with the family, or the amounts owed by the family exceed the Federal or State threshold for criminal prosecution.

**PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)**

**16-IV.A. OVERVIEW**

The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

**16-IV.B. PHAS INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]**

The table below lists each of the PHAS indicators, the points possible under each indicator, and a brief description of each indicator. A PHA’s performance is based on a combination of all four indicators.

<p><b>Indicator 1: Physical condition of the PHA’s properties</b></p> <p><b>Maximum Score: 30</b></p> <ul style="list-style-type: none"> <li>• The objective of this indicator is to determine the level to which a PHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary, and in good repair.</li> <li>• To determine the physical condition of a PHA’s properties, inspections are performed of the following five major areas of public housing: site, building exterior, building systems, dwelling units, and common areas. The inspections are performed by an independent inspector arranged by HUD, and include a statistically valid sample of the units in the PHA’s public housing portfolio.</li> </ul>
<p><b>Indicator 2: Financial condition of a PHA</b></p> <p><b>Maximum Score: 30</b></p> <ul style="list-style-type: none"> <li>• The objective of this indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair.</li> <li>• A PHA’s financial condition is determined by measuring the PHA’s entity-wide performance in each of the following components: current ratio, number of months expendable fund balance, tenant receivable outstanding, occupancy loss, expense</li> </ul>

management/utility consumption, and net income or loss divided by the expendable fund balance.

**Indicator 3: Management operations of a PHA**

**Maximum Score: 30**

- The objective of this indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.
- A PHA's management operations are assessed based on the following sub-indicators: vacant unit turnaround time, capital fund, work orders, PHA annual inspection of units and systems, security, and economic self-sufficiency.

**Indicator 4: Resident service and satisfaction**

**Maximum Score: 10**

- The objective of this indicator is to measure the level of resident satisfaction with living conditions at the PHA.
- The PHA's score for this indicator is based on the results of resident surveys and the level of implementation and follow-up or corrective actions the PHA takes based on the results of the survey.

**16-IV.C. PHAS SCORING [24 CFR 902.63 and 902.67]**

HUD's Real Estate Assessment Center (REAC) issues overall PHAS scores, which are based on the scores of the four PHAS indicators, and the components under each indicator. PHAS scores translate into a designation for each PHA as high performing, standard, or troubled.

A high performer is a PHA that achieves a score of at least 60 percent of the points available under each of the four indicators, and achieves an overall PHAS score of 90 or greater.

A standard performer is a PHA that has an overall PHAS score between 60 and 89, and does not achieve less than 60 percent of the total points available under one of the following Indicators: 1, 2, or 3.

A troubled performer is a PHA that achieves an overall PHAS score of less than 60, or achieves less than 60 percent of the total points available under more than one of the following indicators: 1, 2, or 3.

These designations can affect a PHA in several ways:

- High-performing PHAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
- PHAs that are standard performers may be required to submit an improvement plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)].



- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, and are required to enter into a memorandum of agreement (MOA) with HUD to improve PHA performance [24 CFR 902.75].
- PHAs that fail to execute or meet MOA requirements may be referred to the Departmental Enforcement Center [24 CFR 902.77].

PHAs must post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status.

## **PART V: RECORD KEEPING**

### **16-V.A. OVERVIEW**

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual’s privacy rights.

### **16-V.B. RECORD RETENTION**

#### PHA Policy

During the term of each public housing tenancy, and for at least four years thereafter, the PHA will keep all documents related to a family’s eligibility, tenancy, and termination.

In addition, the PHA will keep the following records for at least four years:

An application from each ineligible family and notice that the applicant is not eligible

Lead-based paint records as required by 24 CFR 35, Subpart B

Documentation supporting the establishment of flat rents and the public housing maximum rent

Documentation supporting the establishment of utility allowances and surcharges

Documentation supporting PHAS scores

Accounts and other records supporting PHA budget and financial statements for the program

Other records as determined by the PHA or as required by HUD

If a hearing to establish a family’s citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 14-II.A.

## **16-V.C. RECORDS MANAGEMENT**

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

### PHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.

PHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

### **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

### **Upfront Income Verification (UIV) Records**

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification (UIV) Data*.

### PHA Policy

Prior to utilizing HUD's EIV system, the PHA will adopt and implement EIV security procedures required by HUD.

### **Criminal Records**

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. 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.

## **PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

### **16-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e)]**

The PHA has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing.

The PHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional. The PHA must also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

#### PHA Policy

The PHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

The PHA will provide written notice of each known case of a child with an environmental intervention blood level to the HUD field office within 5 business days of receiving the information.

## **PART VII: NOTIFICATION TO APPLICANTS AND TENANTS REGARDING PROTECTIONS UNDER THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2005 (VAWA)**

### **16-VII.A. NOTIFICATION TO APPLICANTS**

#### PHA Policy

The PHA will provide all applicants with notification of their protections and rights under VAWA at the time they request an application for housing assistance.

The notice will explain the protections afforded under the law, inform each applicant of PHA confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

The PHA will also include in all notices of denial a statement explaining the protection against denial provided by VAWA (see section 3-III.F).

#### **16-VII.B. NOTIFICATION TO TENANTS [Pub.L. 109-162]**

VAWA requires PHAs to notify tenants assisted under public housing of their rights under this law, including their right to confidentiality and the limits thereof.

##### PHA Policy

The PHA will provide all tenants with notification of their protections and rights under VAWA at the time of admission and at annual reexamination.

The notice will explain the protections afforded under the law, inform the tenant of PHA confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

The PHA will also include in all lease termination notices a statement explaining the protection against termination or eviction provided by VAWA (see Section 13-IV.D).