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# Housing Authority of the County of Merced

## Admissions and Continued Occupancy Procedure (ACOP) For the Public Housing Program



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## **Chapter 1 OVERVIEW OF THE PROGRAM AND PLAN**

### **INTRODUCTION**

As a Public Housing Agency (PHA), the Housing Authority of the County of Merced "Authority" receives its operating subsidy for the public housing program from the U.S. Department of Housing and Urban Development (HUD). The Authority is not a federal department or agency. A public housing agency is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. The Authority enters into an Annual Contributions Contract (ACC) with HUD to administer the public housing program. The Authority must ensure compliance with federal laws, regulations and notices and must establish Procedure to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about the Authority and its programs with emphasis on the public housing program. It also contains information about the purpose, intent and use of this plan and guide.

There are three parts to this chapter:

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

Part II: The Public Housing Program. This part contains information about public housing operation, roles and responsibilities, and partnerships.

Part III: The Admissions and Continued Occupancy (ACOP). This part discusses the purpose and organization of the plan and its revision requirements.

## **PART I: THE HOUSING AUTHORITY**

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

This part describes the Authority's creation and authorization, the general structure of the organization, and the relationship between the Authority's Board of Commissioners and staff.

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

Public housing is funded by the federal government and administered by the Authority for the jurisdiction of Merced County.

The Authority is governed by a board of officials that are generally called "Commissioners." Although some Housing Authority's may use a different title for their officials, this document will refer to the "Board of Commissioners" or the "Board" when discussing the board of governing officials.

Commissioners are appointed in accordance with state housing law and generally serve in the same capacity as the directors of a corporation. The Board of Commissioners establishes



policies under which the Authority conducts business, and ensures that those policies are followed by Authority staff. The Board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability and success. Formal actions of the Authority are taken through written resolutions, adopted by the Board and entered into the official records of the Authority.

The principal staff member of the Authority is the Executive Director who is selected and hired by the Board. The Executive Director oversees the day-to-day operations of the Authority and is directly responsible for carrying out the policies established by the Commissioners. The Executive Director's duties include hiring, training, and supervising the Housing Authority's staff, as well as budgeting and financial planning for the agency. Additionally, the Executive Director is charged with ensuring compliance with federal and state laws and program mandates.

### **1-I.C. HOUSING AUTHORITY MISSION**

#### Housing Authority Mission Statement

The Authority offers affordable housing opportunities in our community, free from discrimination, to enhance the quality of life for those we serve.

### **1-I.D. HOUSING AUTHORITY'S COMMITMENT TO ETHICS AND SERVICE**

As a public service agency, the Authority is committed to providing excellent service to all public housing applicants, residents, and the public. In order to provide superior service, the Authority resolves to:

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe and sanitary housing in good repair and to remain in compliance with HUD's Uniform Physical Condition Standards (UPCS).
- Achieve a healthy mix of incomes in its public housing developments by attracting and retaining higher income families and by working toward deconcentration of poverty goals.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities, which address educational, socioeconomic, recreational and other human services needs.
- Promote fair housing and the opportunity for very low-income 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 the Authority'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 Authority's support systems and commitment to our employees and their professional development.

The Authority 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 intent of this section is to provide the public and staff an overview of the history and operation of public housing.

The United States Housing Act of 1937 ("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 (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 Housing Authority's 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 Housing Authority's to develop five-year and annual plans; income targeting, a requirement that 40% of all new admissions in public housing during any given fiscal year be reserved for extremely low-income families; and resident self- sufficiency incentives.

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

HUD writes and publishes regulations in order to implement public housing laws enacted by Congress. HUD contracts with the Housing Authority to administer programs in accordance with HUD regulations and provides an operating subsidy to the Housing Authority. The Housing Authority must create written policies that are consistent with HUD regulations. Among these policies is the Housing Authority's Admissions and Continued Occupancy Procedure (ACOP). The ACOP must be approved by the Board of Commissioners of the Housing Authority. The job of the Housing Authority pursuant to HUD regulations is to provide decent, safe, and sanitary housing, in good repair, to low-income families at an

affordable rent. The Housing Authority screens applicants for public housing and, if they are found eligible and accepted, the Housing Authority offers the applicant a unit. If the applicant accepts the offer, the Housing Authority will enter into a contract with the applicant known as the lease. At this point, the applicant becomes a tenant of the public housing program.

In the context of the public housing program, a tenant is defined as the adult person(s) (other than a live-in aide) who (1) executed the lease with the Housing Authority as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit [24 CFR 966.53]. The Public Housing Occupancy Guidebook refers to tenants as "residents." The terms "tenant" and "resident" are used interchangeably in this Procedure. Additionally, this Procedure uses the term "family" or "families" for residents or applicants, depending on context.

Since the Housing Authority owns and manages public housing developments, the Housing Authority is the landlord. The Housing Authority 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 Housing Authority policies.

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

The relationships between parties are defined by federal regulations and by contract. To administer the public housing program, the Housing Authority enters into a contractual relationship with HUD through the ACC. The Housing Authority also enters into a contractual relationship with the tenant through the 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 to be successful for all parties involved; HUD, the Housing Authority, and the tenant must play their important parts.

### **HUD's Responsibilities**

Federal law is the source of HUD's responsibilities. HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices and other guidance to implement housing legislation passed by Congress.
- Allocate operating subsidies to Housing Authorities.
- Allocate capital funding to Housing Authorities.
- Provide technical assistance to Housing Authorities on interpreting and applying program requirements.
- Monitor Housing Authorities compliance with program requirements and Housing

Authorities performance in program administration.

### **The Authority's Responsibilities**

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

- Establish the ACOP.
- Review applications from interested applicant families to determine whether applicants are eligible for the program.
- Maintain waiting lists and select applicants for admission.
- Maintain housing units by making any necessary repairs in a timely manner.
- Screen applicants who apply for tenancy, to determine if they will be good tenants.
- Offer units to applicants (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 (UPCS)).
- Ensure the Housing Authority has adequate financial resources to maintain its housing stock.
- Ensure that participants continue to qualify under the program.
- Collect rent due from the assisted family and comply with and enforce provisions of the lease.
- Ensure that participants comply with program rules.
- Provide applicants and program participants with prompt and professional service.
- Comply with all Fair Housing and Equal Opportunity (FHEO) requirements, HUD regulations and requirements, the ACC, HUD-approved applications for funding, the Housing Authority's ACOP, and other applicable federal, state, and local laws.

### **Tenant's Responsibilities**

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

- Comply with the terms of the lease and house rules.
- Provide the Housing Authority with complete and accurate information, determined

by the Housing Authority to be necessary for the administration of the program.

- Cooperate in attending all appointments scheduled by the Housing Authority.
- Allow the Housing Authority to inspect the unit at reasonable times and after reasonable notice.
- Take responsibility for care of the housing unit, including any violations of UPCS caused by the family.
- Not engage in drug-related or violent criminal activity on or off the premises.
- Notify the Housing Authority in writing at least thirty (30) calendar days before terminating 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 Housing Authority in writing of any changes in the family composition within thirty (30) calendar days.
- 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 to, and Occupancy of, Public Housing
- 24 CFR Part 965: Housing Authority-Owned or Leased Projects – General Provisions
- 24 CFR Part 966: Lease and Grievance Procedures

### **PART III: ADMISSIONS AND CONTINUED OCCUPANCY POLICIES (ACOP)**

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

The ACOP is the Housing Authority'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 Housing Authority'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 Housing Authority 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 PROCEDURE**

Unlike the Housing Choice Voucher Program, HUD regulations for public housing do not contain a list of what must be included in the ACOP. However, individual regulations contain requirements of inclusion in the Housing Authority's written Procedure. At a minimum, the ACOP plan should cover Housing Authority policies on these subjects:

- The organization of the waiting lists and how applicants are selected and offered available units, including any Housing Authority admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the Housing Authority waiting lists (see Chapter 4-Applications, Waiting Lists and Tenant Selection and Chapter 5-Occupancy Standards and Unit Offers for more information).
- Transfer policies and the circumstances under which a transfer would take precedence over an admission (see Chapter 12-Transfer Procedure for more information).
- Standards for determining eligibility, suitability for tenancy, and the size and type of the unit needed (see Chapter 3-Eligibility and Chapter 5-Occupancy Standards and Unit Offers for more information).
- Procedures for verifying the information the applicant/participant has provided (see Chapter 7- Verification for more information).
- The method for achieving deconcentration of poverty and income mixing of public housing developments (see Chapter 4- Applications, Waiting List and Tenant Selection for more information).
- Grievance procedures (see Chapter 14-Grievances and Appeals for more information).
- Policies concerning payments by a family to the Housing Authority of amounts the family owes the Housing Authority (see Chapter 15-Program Integrity and Chapter 16- Program Administration for more information).
- Annual and interim reexaminations of family income and composition (see Chapter 9- Reexaminations for more information).

- Policies regarding community service requirements (see Chapter 11-Community Service for more information).
- Policies and rules about safety and ownership of pets in public housing (see Chapter 10- Pet Ownership for more information).

### **Procedure Development**

HUD has developed an approach to monitoring Procedure that emphasizes the importance of consistency. The ACOP supports that goal by clearly defining Housing Authorities Procedure for Housing Authorities management and staff.

A primary focus of programs like HUD’s Rental Integrity Monitoring (RIM) program has been consistency in how Housing Authorities conduct their business and in how HUD monitors Housing Authority activities. HUD has made it clear that consistency in Housing Authorities conduct is important. Referring to and following the ACOP is essential to maintaining consistency in applying the Housing Authority’s Procedure.

HUD makes a distinction between:

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

HUD expects Housing Authorities to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies the Housing Authority has adopted. The Housing Authority’s ACOP is the document that contains and clarifies Housing Authority Procedure.

HUD’s direction adds additional emphasis on the need for a clearly written and comprehensive ACOP to guide staff in a clear and consistent application of Procedure.

HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. Therefore, following HUD’s guidance in the preparation of the Housing Authority’s Procedure, even though it is not mandatory, provides a Housing Authority with a “safe harbor.”

If a Housing Authority adopts its own optional Procedure, it must make its own determination that such Procedure is consistent with legislation, regulations, and other mandatory requirements.

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

### Housing Authority Procedure

The Housing Authority will review and update the ACOP at least once a year, and more often if needed, to reflect changes in regulations, Housing Authority operations, or when needed to ensure staff consistency in the operation of the program. The original Policy and any changes must be approved by the Board of Commissioners of the Housing Authority and a copy provided to HUD



## Chapter 2 FAIR HOUSING AND EQUAL OPPORTUNITY

### INTRODUCTION

This chapter explains the HUD regulations requiring Housing Authorities to affirmatively further civil rights and fair housing in all federally assisted housing programs. The letter and spirit of these laws are implemented through consistent Procedure and processes. The responsibility to further nondiscrimination pertains to all areas of the Housing Authority's public housing operations.

This chapter describes HUD regulations and Housing Authority's policies related to these topics in three parts:

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

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

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

### PART I: NONDISCRIMINATION

#### 2-I.A. OVERVIEW

Federal laws require Housing Authorities 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/or disability. The Housing Authority 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); and
- 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.

Housing Authority Procedure

The State of California prohibits discrimination in housing on the basis of race, color, religion, national origin, ancestry, disability, sex (including sexual orientation and gender identity/expression), marital status, sexual orientation, familial status, and source of income.

**2-I.B. NONDISCRIMINATION**

Federal regulations prohibit discrimination against certain protected classes. State and local requirements, as well as Housing Authority policies, may also prohibit discrimination against additional classes of people.

Housing Authority Procedure

The Housing Authority shall not discriminate regardless of race, color, religion, familial status, age, disability, national origin (called "protected classes"), ancestry, disability, sex (including sexual orientation and gender identity/expression), marital status, or source of income. Familial status includes children under 18 years of age living with parents or legal custodians, pregnant women, and people securing custody of children under 18 years of age.

When determining program eligibility, the Housing Authority will not use any of the above stated factors to:

- Deny any applicant 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 access to any benefit enjoyed by others in connection with the housing program.
- Treat a person differently in determining eligibility or other requirements for admission.

- Steer an applicant or tenant toward or away from a particular area based on any of these factors.
- Deny anyone access to the same level of services.
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program.
- Discriminate in the provision of residential real estate transactions.
- Discriminate against someone because they are related to or associated with a member of a protected class.
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

**Providing Information to Families**

The Housing Authority 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 Housing Authority will provide information to public housing applicant families about the civil rights requirements during orientation.

**Discrimination Complaints**

If an applicant or tenant family believes that any family member has been discriminated against by the Housing Authority, the applicant or tenant family should notify the Housing Authority. HUD requires the Housing Authority to make every reasonable attempt to determine whether the applicant’s or tenant family’s assertions have merit and take any warranted corrective action.

Housing Authority Procedure

Applicants or tenant families who believe that they have been subject to unlawful discrimination may notify the Housing Authority either orally or in writing. The Housing Authority will attempt to remedy discrimination complaints made against the Housing Authority. The Housing Authority will provide 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) for their review.

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

**2-II.A. OVERVIEW**

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

The Housing Authority must ensure that persons with disabilities have full access to the

Housing Authority's programs and services. This responsibility begins with the first inquiry of an interested applicant and continues through every programmatic area of the public housing program [24 CFR Part 8].

The Housing Authority must provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a disability 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)]. Outreach efforts will include notification of the Authority's 504 Coordinator as well as all other media and agencies listed in the ACOP regarding public notices.

#### Housing Authority Procedure

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

"If you or anyone in your family is a person with disabilities, and you require a specific reasonable accommodation in order to fully utilize our programs and services, please contact the Housing Authority."

A specific name and phone number will be indicated as the contact for requests for reasonable accommodation for persons with disabilities.

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

A "reasonable accommodation" is a change, exception, or adjustment to a rule, Procedure, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

Federal regulations stipulate that requests for reasonable accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the Housing Authority, 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 Section 2-II.E), the Housing Authority shall accommodate the needs of a person with disabilities. Examples include, but are not limited to the following:

- 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 Housing Authority 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 disability accessible parking space;
- Allowing an assistance animal;
- Permitting an authorized designee or advocate to participate in the application or reexamination process and any other meetings with Housing Authority staff; and
- Displaying posters and other housing information in locations throughout the Housing Authority's offices in such a manner as to be easily readable from a wheelchair.

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

If an applicant or participant indicates that an exception, change, or adjustment to a rule, Procedure, practice, or service is needed because of a disability, HUD requires that the Housing Authority 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 applicant or participant must explain what type of reasonable accommodation is needed to provide the person with the disability full access to the Housing Authority's programs and services.

If the need for the reasonable accommodation is not readily apparent or known to the Housing Authority, the applicant, or participant must explain the relationship between the requested reasonable accommodation and the disability.

#### Housing Authority Procedure

The Housing Authority will encourage the applicant or participant to make its request in writing using a Reasonable Accommodation Request form. However, the Housing Authority will consider the reasonable accommodation any time the applicant or participant indicates

that a reasonable accommodation is needed whether or not a formal written request is submitted. The Housing Authority will not grant a reasonable accommodation that would allow the tenants to grow, use, otherwise possess, or distribute medical marijuana, even if in doing so such tenants are complying with state laws authorizing medical marijuana related conduct. The Housing Authority will deny admission to those applicant households with individuals who are, at the time of consideration for admission, using medical marijuana. [The Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. 13661)].

#### **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 obtaining a reasonable accommodation is much broader than the HUD definition of disability, which is used for waiting list preferences and income allowances.

After being notified either verbally or in writing by an applicant or participant requesting a reasonable accommodation, the Housing Authority must determine that the person meets the definition of a person with a disability, and that the reasonable accommodation will enhance the applicant or participant's access to the Housing Authority's programs and services, prior to providing the reasonable accommodation.

If a person's disability is obvious or otherwise known to the Housing Authority, and if the need for the requested reasonable accommodation is also readily apparent or known, no further verification may be required.

If an applicant or participant indicates that a reasonable accommodation is required for a disability that is not obvious or otherwise known to the Housing Authority, the Housing Authority 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 reasonable accommodation.

When verifying a disability, the Housing Authority will follow the verification policies provided in Chapter 7-Verification. 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 applicant or participant 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 Housing Authority must request only information that is necessary to evaluate the disability related need for the reasonable accommodation. The Housing Authority 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 REASONABLE ACCOMMODATION**

[Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]

The Housing Authority must approve a request for a reasonable accommodation if the following three conditions are met:

1. The request was made by or on behalf of a person with a disability.
2. There is a disability-related need for the reasonable accommodation.
3. The requested reasonable accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the Housing Authority, or fundamentally alter the nature of the Housing Authority's operations.

Requests for reasonable 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 reasonable accommodation, the financial resources of the Housing Authority at the time of the request, the benefits that the reasonable accommodation would provide to the applicant or participant, and the availability of alternative reasonable accommodations that would effectively meet the applicant or participant's disability-related needs.

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

#### Housing Authority Procedure

After a request for a reasonable accommodation is presented, the Housing Authority will respond, in writing, within ten (10) business days.

If the Housing Authority denies a request for a reasonable accommodation because there is no relationship, or nexus, found between the disability and the requested reasonable accommodation, the notice will inform the applicant or participant of the right to appeal the Housing Authority's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14-Grievances and Appeals for more information).

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

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

The Housing Authority will not grant a reasonable accommodation that would allow the tenants to grow, use, otherwise possess, or distribute medical marijuana, even if in doing so such tenants are complying with state laws authorizing medical marijuana related conduct. The Housing Authority will deny admission to those applicant households with individuals who are, at the time of consideration for admission, using medical marijuana. [The Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. 13661)].

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

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

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

##### Housing Authority Procedure

To meet the needs of persons with hearing impairments, Telecommunications Device for the Deaf/TeleType (TDD/TTY), 711, 1-800-855-7100, communication will be available.

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

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

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

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

- PIH 2003-31 (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 Housing Authority’s policies concerning physical accessibility must be readily available to applicants and resident families. They can be found in three key documents:

- The Admissions and Continued Occupancy Procedure, describes the key policies that govern the Housing Authority’s responsibilities with regard to physical accessibility.
- Notice PIH 2003-31(HA) Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968, and the Fair Housing Act of 1988 summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally funded housing programs.
- The Public Housing Agency Annual Plan provides information about self-evaluation, needs assessment, and transition plans.

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

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

A Housing Authority’s decision to deny or terminate the assistance of an applicant or participant that includes a person with disabilities is subject to consideration of reasonable accommodation. 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 participant’s lease is terminated, the notice of termination must inform the participant of their right to request a hearing in accordance with the Housing Authority’s grievance process [24 CFR 966.4 (e)(8)(ii)].

When reviewing reasonable accommodation requests, the Housing Authority must consider whether reasonable accommodation will allow the applicant or participant to overcome the problem that led to the Housing Authority’s decision to deny or terminate assistance. If a reasonable accommodation will allow the applicant or participant to meet the requirements, the Housing Authority must make the reasonable accommodation [24 CFR 966.7].

In addition, the Housing Authority 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**

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

The Housing Authority 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 Procedure, LEP persons are public housing applicants and resident families, and parents and family members of applicants and resident families. In order to determine the level of access needed by LEP

persons, the Housing Authority will balance the following four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the public housing program;
2. The frequency with which LEP persons come into contact with the program;
3. The nature and importance of the program, activity, or service provided by the program to people's lives; and
4. The resources available to the Housing Authority and costs associated with the level of access needed by LEP persons.

Balancing these four (4) factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the Housing Authority.

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

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

#### Housing Authority Procedure

The Housing Authority 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 Housing Authority will train and hire bilingual staff to be available to act as interpreters and translators, and will standardize documents. Where feasible and possible, the Housing Authority will encourage the use of qualified community volunteers.

When 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 Housing Authority. The interpreter may be a family member or friend who is 18 years of age or older.

### **2-III.C. WRITTEN TRANSLATION**

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

#### Housing Authority Procedure

In order to comply with written translation obligations, the Housing Authority will take the following steps:

- The Housing Authority will provide written translations of vital documents for each eligible LEP language group that constitutes five percent (5%) percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
- If there are fewer than fifty (50) persons in a language group that reaches the five percent (5%) trigger, the Housing Authority may not translate vital written materials, but will provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

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

After completing the four (4) factor analysis and deciding what language assistance services are appropriate, the Housing Authority shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

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

#### Housing Authority Procedure

If it is determined that the Housing Authority serves very few LEP persons, and the Housing Authority has very limited resources, the Housing Authority will not develop a written LEP plan, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as

schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants will be contacted for input into the process.

If the Housing Authority determines it is appropriate to develop a written LEP plan, the following steps will be taken:

1. Identifying LEP individuals who need language assistance; (2) Identifying language assistance measures;
2. Training staff;
3. Providing notice to LEP persons; and
4. Monitoring and updating the LEP plan.

The Housing Authority has developed a Language Access Plan (LAP) to ensure its programs and services are accessible to person(s) with LEP.

**EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS [24 CFR 8.3; 24 CFR Part 104; and 24 CFR 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, Human Immunodeficiency Virus Infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

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

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

"Is regarded as having an impairment" is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the Housing Authority) 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; and/or
- 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 allowable 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 a reasonable accommodation is needed to provide equal opportunity.

**PRIVACY RIGHTS [24 CFR 982.551 AND 24 CFR 5.212]**

Applicants and participants, including all adults in their households, are required to sign the HUD 9886 *Authorization for Release of Information*. This document incorporates the Federal Privacy Act Statement and describes the conditions under which HUD and the Authority will release family information. The Authority's policy regarding release of information is in accordance with State and local laws which may restrict the release of family information.

Any and all information which would lead one to determine the nature and/or severity of a person's disability must be kept in a separate folder and marked "confidential" or returned to the family member after its use. The personal information in this folder must not be released except on an "as needed" basis in cases where an accommodation is under consideration. All requests for access and granting of accommodations based on this information must be approved by the Director of Housing Programs.

The Authority's practices and procedures are designed to safeguard the privacy of applicants and program participants. All applicant and participant files will be stored in a secure location which is only accessible by authorized staff. The Authority will not collect or maintain sensitive personally identifiable information without proper authorization. Additionally, the Authority will only collect Personally Identifiable Information (PII) that is needed for the purpose for which it is collected.

- Personally Identifiable Information is defined in the Office of Management and Budget (OMB), M-07-16 as ". . . information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc."

- Sensitive Personally Identifiable Information is PII that when lost, compromised or disclosed without authorization could substantially harm an individual. Examples of sensitive PII include social security or driver's license numbers, medical records, and financial account numbers such as credit or debit card numbers.

Authority staff will not discuss family information contained in files 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 (reference Section 906 of the Personnel Policy).

The Authority utilizes HUD's Enterprise Income Verification (EIV) system as an on-line source for income verification before or during a reexamination, through an independent source that systematically and uniformly maintains income information in a computerized format for a large number of individuals. This system enables the Authority to check a variety of income sources for all family members, regardless of income sources reported by applicants and participants.

The Authority staff may not disclose EIV data to any third parties (EIV data is property of HUD and protected by the Federal Privacy Act). Staff may only provide EIV data to the individual (only) to whom the record pertains and to the receiving HA during a portability transfer (refer to Chapter 13 Moves with Continued Assistance/Portability). EIV data of minors may be provided to the minor's parent or guardian.

All files must be signed for when removed from the secured file storage area.

## **Chapter 3 ELIGIBILITY**

### **INTRODUCTION**

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

To be eligible for the public housing program: The applicant family must:

- Qualify as a family as defined by the United States Department of Housing and Urban Development (HUD) and the Housing Authority.
- Have income at or below HUD-specified income limits.
- Qualify on the basis of citizenship or the eligible immigrant status of family members.
- Provide social security number information for family members as required.

Consent to the Housing Authority's collection and use of family information by signing the applicable consent forms including but not limited to the HUD Form 9886 and the Housing Authority consent forms.

The Housing Authority must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the Housing Authority.

This chapter contains three parts:

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

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

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

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

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

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others apply to individual persons who will live in the public housing unit. This part



provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

### **3-I.B. FAMILY AND HOUSEHOLD**

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

#### **Family [24 CFR 5.403]**

*Family* includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

1. A single person, who may be an elderly person, displaced person, disabled person, near- elderly person, or any other single person; or
2. A group of persons residing together, such group includes, but is not limited to:
  - i. A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
  - ii. An elderly family;
  - iii. A near-elderly family;
  - iv. A disabled family;
  - v. A displaced family; and
  - vi. The remaining member of a tenant family.

In addition, the Housing Authority has determined other group of persons qualifies as a family.

#### Housing Authority Procedure

To qualify as a family, when all members are not related by blood, marriage, adoption, or other operation of law, the Housing Authority will require documentation of a stable relationship and certification of shared resources between otherwise unrelated individuals. Additionally, documentation will need to be provided that a living arrangement was already in place for a minimum of twelve (12) months.

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.

#### **Household**

*Household* is a broader term that includes additional people who, with the Housing Authority'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**

#### **Break-up**

#### Housing Authority Procedure

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

If a family breaks-up into two otherwise eligible families while living in public housing, only one of the new families will continue to be assisted.

If a court determines the disposition of property between members of the applicant or resident family in a divorce or separation decree, the Housing Authority will abide by the court's determination.

In the absence of a judicial decision or an agreement among the original family members, the Housing Authority will determine which family retains their placement on the waiting list, or will continue in occupancy taking into consideration the following factors: (1) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) any possible risks to family members as a result of domestic violence or criminal activity, and (4) the recommendations of social service professionals.

### **Remaining Member of a Tenant Family [24 CFR 5.403]**

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

If dependents are the only "remaining members of a tenant family" and there is no family member able to assume the responsibilities of the head of household, See Chapter 6- Income and Rent Determinations, Section 6-I.B, for the Procedure on "Caretakers for a Child."

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

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

#### Housing Authority Procedure

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

### **3-I.E. SPOUSE, CO-HEAD, AND OTHER ADULT [HUD-50058 Instructional Booklet, Section 3h, Household, Relation]**

A family may have a spouse or co-head, but not both.

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

#### Housing Authority Procedure

A *marriage partner* includes the partner in a "common law" marriage as defined in state law. The term "spouse" does not apply to friends, roommates, or significant others who

are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

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

#### Housing Authority Procedure

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

*Other adult* means a member of the household (excludes foster adults), other than the head, spouse, or co-head, who is 18 years of age or older on the effective date of action. Live-in aides are not considered other adults.

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

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

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

##### Housing Authority Procedure

Dependents that are subject to a joint custody arrangement will be considered members of the family, if they live with the applicant or resident family fifty-one (51) 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 Housing Authority will make the determination based on available documents such as court orders, school records, or an IRS return showing which family has claimed the child for income tax purposes.

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

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

Identifying each FTS is important because of the following:

1. Each family member that is an FTS, other than the head, spouse, or co-head, qualifies the family for a dependent deduction; and
2. The income of such an FTS is treated differently from the income of other family members.

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

## **ELDERLY FAMILY**

### **Elderly Persons**

*Elderly Person* means an individual who is at least 62 years of age [24 CFR 5.100].

### **Near-Elderly Persons**

*Near-elderly person* means a person who is at least 50 years of age but below the age of 62, who may be a person with a disability [24 CFR 945.105].

### **Elderly Family**

*Elderly family* means a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age [24 CFR 5.403].

### **Near-Elderly Family**

*Near-elderly family* means a family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 [24 CFR 5.403].

Identifying elderly persons and families is important because these households qualify for special deductions from income as described in Chapter 6-Income and Rent Determinations, and may qualify for a particular type of development as noted in Chapter 4-Applications, Waiting List and Tenant Selection (i.e. elderly-only complex).

## **3-1.1. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403]**

### **Persons with Disabilities**

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

The Housing Authority must make all aspects of the public housing program accessible to persons with disabilities and consider a reasonable accommodation requested based upon a person's disability (see Chapter 2-Fair Housing and Equal Opportunity, Part II, Policies Related to Persons with Disabilities for more information).

### **Disabled Family**

*Disabled family* means a family whose head (including co-head), spouse, or sole member is a person with a disability [24 CFR 5.403].

Identifying disabled families is important because these families qualify for deductions from income as described in Chapter 6-Income and Rent Determinations, and may qualify for a particular type of development as noted in Chapter 4-Applications, Waiting List and Tenant Selection (i.e. elderly-only complex).

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the Housing

Authority from denying admission for reasons related to alcohol and drug abuse following the policies found in Part III of this chapter, or from enforcing the lease following the policies in Chapter 13-Lease Terminations.

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

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

The lease must provide that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests [24 CFR 966.4(d)]. The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near Housing Authority premises [24 CFR 966.4(f)(9-12)].

#### Housing Authority Procedure

A guest can remain in the unit no longer than fourteen (14) cumulative calendar days during any twelve (12) month period.

A family may request an exception to this Procedure for valid reasons (e.g., care of a relative recovering from a medical procedure expected to last twenty (20) consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

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 fifty-one percent (51%) 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].

#### Housing Authority Procedure

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**

##### Housing Authority Procedure

Generally, an individual who is, or is expected to be, absent from the public housing unit for an accumulation of ninety (90) days is considered temporarily absent and continues to be considered a family member. An individual who is, or is expected to be, absent from the public housing unit for more than an accumulation of ninety (90) days is considered permanently absent and no longer a household member. Exceptions to this general Procedure are discussed below.

#### **Absent Students**

##### Housing Authority Procedure

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 Housing Authority 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 [24 CFR 5.403]**

Children temporarily absent from the home due to placement in foster care shall be considered members of the family.

##### Housing Authority Procedure

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

#### **Absent Head, Spouse, or Co-head**

##### Housing Authority Procedure

An employed head, spouse, or co-head absent from the unit for more than ninety (90) consecutive days due to employment will continue to be considered a family member.

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

##### Housing Authority Procedure

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 Housing Authority 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**

### Housing Authority Procedure

The family must request Housing Authority approval for the return of any adult family members that the Housing Authority 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 Housing Authority must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR Part 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 live-in 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.

### Housing Authority Procedure

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.

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

The Housing Authority will not 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;
- The person currently owes rent or other amounts to the Housing Authority or to another Housing Authority in connection with the Housing Choice Voucher Program (HCVP), formerly known as Section 8 or public housing assistance under the United States Housing Act of 1937;

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

## **PART II: BASIC ELIGIBILITY CRITERIA**

### **3-II.A. INCOME ELIGIBILITY AND TARGETING Income Limits**

HUD is required by law to set income limits that determine the eligibility of applicants for HUD's assisted housing programs, including the public housing program. The income limits are published annually and are based on HUD estimates of median family income in a particular area or county, with adjustments for family size.

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

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

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

*Extremely low-income family.* A very-low income family whose annual income does not exceed the higher of:

1. The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or
2. Thirty (30) percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the 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 forty percent (40%) of the families admitted to the Housing Authority's public housing program during a Housing Authority fiscal year from the Housing Authority waiting list must be *extremely low-income* families. This is called the "basic targeting requirement".

If admissions of extremely low-income families to the Housing Authority's HCVP during a Housing Authority fiscal year exceed the seventy-five percent (75%) minimum targeting requirement for that program, such excess shall be credited against the Housing Authority's public housing basic targeting requirement for the same fiscal year.

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

- Ten percent (10%) of public housing waiting list admissions during the Housing Authority's fiscal year;
- Ten percent (10%) of waiting list admission to the Housing Authority's HCVP during the Housing Authority's fiscal year; and
- 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 thirty percent (30%) or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

For a description on how income targeting is used in tenant selection, see Chapter 4-Applications, Waiting List and Tenant Selection.

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

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

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

**Declaration [24 CFR 5.508]**

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, co-head, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible

Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

### **U.S. Citizens and Nationals**

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

#### Housing Authority Procedure

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

### **Eligible Noncitizens [Public Law 106-504, 24 CFR 5.508(b)(2)]**

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

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

For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

- i. A signed declaration of immigration status; and
- ii. Proof of Age Document

For all other noncitizens, the evidence consists of:

- i. A signed declaration of immigration status;
- ii. One of the Immigration and Naturalization Service (INS) documents referred to in §5.510; and
- iii. A signed verification consent form.

### **Ineligible Noncitizens**

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family member listing, signed by the head, spouse,

or co-head (regardless of citizenship status), indicating their ineligible immigration status. The Housing Authority 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 [24 CFR 5.504]**

A family is eligible for admission as long as at least one member is a citizen, national, or eligible noncitizen. Mixed family means a family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. 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-Income and Rent Determinations, for more information on how rents are prorated, and Chapter 14-Grievances and Appeals, for a more information on the informal hearing procedures.

**Ineligible Families [24 CFR 5.514]**

A Housing Authority may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)] is established. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the Housing Authority that the individual or at least one family member is eligible [24 CFR 5.512(a)].

Housing Authority Procedure

The Housing Authority will not provide assistance to a family before the verification of at least one family member as a citizen, national, or eligible non-citizen.

When a Housing Authority determines that an applicant family does not include any citizens, nationals, or eligible non-citizens, following the verification process, the family will be sent a written notice within ten (10) business days of the determination.

The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the USCIS, or to request an informal hearing with the Housing Authority. The informal hearing with the Housing Authority 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-Grievances and Appeals.

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

For new occupants joining the resident family the Housing Authority 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 Housing Authority must grant such an extension for no more than thirty (30) days [24 CFR 5.508(h)].

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

#### Housing Authority Procedure

The Housing Authority will verify eligible immigration status simultaneously with the verification of other aspects of eligibility.

#### **3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, PIH 2012-10 (HA)]**

Families are required to provide verification of Social Security Numbers (SSN) for all family members prior to admission. This requirement also applies to persons joining the family after admission to the program. If the Housing Authority determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the following documentation to verify the SSN of each member of the household.

- A valid SSN card issued by the SSA;
- An original document issued by a federal or state government agency, which contains the name of the individual and the SSN of the individual, along with other identifying information of the individual; or
- Such other evidence of the SSN as HUD may prescribe in administrative instructions

If a child under the age of 6 years was added to the assistance applicant household within the 6- month period prior to the household's date of admission the assistance applicant may become a participant, so long as the documentation referenced in the bullets above is provided to the Housing Authority within 90 calendar days from the date of admission into the program. The Housing Authority must grant an extension of one additional 90-day period if the Housing Authority determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation referenced in the bullets above within the required time period, the processing entity must follow the provisions of 24 CFR 5.218.

#### Disclosure Requirements

Disclosure of SSN is required. The requirements of this section apply to applicants and participants (including each member of the household and including live-in aides, foster children, and foster adults). Each applicant and participant must submit complete and accurate SSN assigned to the applicant and to each member of the applicant's household.

Each person, except those 62 years of age or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, must submit a valid SSN if the participant has:

- Not previously disclosed a SSN;
- Previously disclosed a SSN that HUD or the Social Security Administration (SSA) determined was invalid; or
- Been issued a new SSN

Once an applicant has provided Social Security Numbers for the household and the Housing Authority has verified each SSN, the following rules apply:

*Addition of new household member who is at least six (6) years of age or under the age of six (6) and has an assigned SSN.* When the participant requests to add a new household member who is at least six (6) years of age, or is under the age of six (6) and has an assigned SSN, the participant must provide the following to the Housing Authority at the time of the request, or at the time of processing the interim reexamination or reexamination of family composition that includes the new member(s).

- An original SSN card issued by SSA;
- An original SSA-issued document, which contains the name and SSN of the individual; or
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual.

*Addition of new household member who is under the age of six (6) and has no assigned SSN.* When a participant requests to add a new household member who is under the age of six (6) and has not been assigned a SSN, the participant shall be required to provide the complete and accurate SSN assigned to each new child within ninety (90) calendar days of the child being added.

The Housing Authority shall grant an extension of one (1) additional ninety (90) day period if the processing entity, in its discretion, determines that the participant's/applicant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant/applicant.

When determining eligibility, each applicant must submit the information to the Housing Authority. If the applicant does not provide requested SSN and the Housing Authority determines that the applicant is otherwise eligible to participate in a program, the applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the complete and accurate SSN assigned to each member of the household (same rules apply with regard to extensions granted to obtain SSN).

The mandatory social security number requirements does not apply to individuals in mixed families, who do not contend eligible immigration status under HUD's non-citizens regulation nor does it interfere with existing requirements relative to proration of assistance or screening for such families.

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

## 2012-09 (HA)]

HUD requires the head of household, spouse, or co-head, regardless of age, and all other adults over 18 years 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-Verification, provides detailed information concerning the consent forms and verification requirements.

The head of household is also required to sign the Supplement to Application for Federally Assisted Housing, Form HUD-92006.

The Housing Authority must deny admission to the program if any member of the applicant family fails to sign and submit consent forms and any additional required forms, which allow the Housing Authority to obtain information that the Housing Authority has determined is necessary in administration of the public housing program [24 CFR 5.232].

### PART III: DENIAL OF ADMISSION

#### 3-III.A. OVERVIEW

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

In addition, HUD permits the Housing Authority to deny admission based on certain types of current or past behaviors of family members as discussed in this part.

#### 3-III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.203, 24 CFR 960.204, 24 CFR 960.205]

Housing Authorities are required to establish standards that prohibit admission of an applicant to the public housing program if they have engaged in certain criminal activity or if the Housing Authority has reasonable cause to believe that a household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

Where the statute requires that the Housing Authority prohibit admission for a prescribed period of time after some disqualifying behavior or event, the Housing Authority may choose to continue that prohibition *for a longer period of time* [24 CFR 960.203(c)(3)(ii)]. **Persons evicted for drug-related criminal activity.** The Housing Authority's standards must prohibit admission of an applicant to the Housing Authority's public housing program for three (3) years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, the Housing Authority may admit the household if the Housing Authority determines:

- i. The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the Housing Authority; or
- ii. The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

### Housing Authority Procedure

The Housing Authority may admit an otherwise eligible family who was evicted from federally assisted housing within the ***past five (5) years*** for drug-related criminal activity, if the Housing Authority is able to verify the following:

1. The household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the Housing Authority; or
2. The person who committed the crime is no longer living in the household.

***Persons engaging in illegal use of a drug.*** The Housing Authority must establish standards that prohibit admission of a household to the Housing Authority's public housing program if the Housing Authority determines:

- i. Any household member is currently engaging in illegal use of a drug (for purposes of this section, a household member is "currently engaged in" the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current). *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]; or
- ii. It has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

### Housing Authority Procedure

*Currently engaged in illegal use of a drug* is defined as any use of illegal drugs during the previous six (6) months. In determining reasonable cause, the Housing Authority 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.

***Persons convicted of methamphetamine production.*** The Housing Authority must establish standards that **permanently prohibit** admission to the Housing Authority's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing [24 CFR 960.204 (a)(3)].

### Housing Authority Procedure

If any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine at any location, not just federally assisted housing, the family will be denied assistance.

***Persons subject to sex offender registration requirement.*** The Housing Authority must establish standards that prohibit admission to the Housing Authority's public housing program if any member of the household is subject to a lifetime registration requirement under any State sex offender registration program. In the screening of applicants, the Housing Authority must perform necessary criminal history background checks in the State where the housing is located and in other States where household members are known to

have resided. [24 CFR 960.204 (a)(4)]

Housing Authority Procedure

If any household member is subject to a lifetime registration requirement under any State sex offender registration program, the family will be denied assistance.

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

HUD permits, but does not require the Housing Authority to deny admission for the reasons discussed in this section.

**Criminal Activity [24 CFR 960.203]**

The Housing Authority has adopted policies and implemented procedures to successfully screen out and deny admission to applicants with unfavorable criminal histories. This Procedure takes into account the importance of screening to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.

Housing Authority Procedure

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five (5) years, the family will be denied admission:

- *Drug-related criminal activity*, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100]. This also includes applicants who are current users of medical marijuana. [The Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. 13661)].
- *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 Housing Authority staff, contractors, subcontractors or agents.
- Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past **five (5) years**.

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



### **Previous Behavior [960.203(c) and (d)]**

In the selection of applicants for admission to its public housing program, or to occupy a public housing development or unit, the Housing Authority is responsible for screening family behavior and suitability for tenancy. The Housing Authority may consider all relevant information, which may include, but is not limited to:

1. An applicant's past performance in meeting financial obligations, especially rent;
2. A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants; and
3. A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants with respect to criminal activity described in 24 CFR 960.204:
  - i. The Housing Authority may require an applicant to exclude a household member in order to be admitted to the housing program where that household member has participated in or been culpable for actions described in 24 CFR 960.204 that warrants denial.
  - ii. (ii)The Housing Authority may, where a statute requires that the Housing Authority prohibit admission for a prescribed period of time after some disqualifying behavior or event, choose to continue that prohibition for a longer period of time.
4. The Housing Authority's tenant selection criteria are subject to 24 CFR Part 5, Subpart L, protections for victims of domestic violence, dating violence, sexual assault, or stalking.

In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense).

In a manner consistent with the Housing Authority's policies, procedures and practices, consideration may be given to factors, which might indicate a reasonable probability of favorable future conduct. For example:

- i. Evidence of rehabilitation; and
- ii. Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs.

### Housing Authority Procedure

The Housing Authority will deny admission to an applicant family if the Housing Authority determines that the family:

- Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past five years.
- Has a pattern of disturbance(s) of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past five years, which may adversely affect the health, safety, or welfare of other tenants.
- Has a pattern of eviction from housing or termination from residential programs within the past **five (5) years** (considering relevant circumstances).
- Owes rent or other amounts to this or any other PHA or owner in connection with any assisted housing program.
- Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent.
- Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- Has engaged in or threatened violent or abusive behavior toward Housing Authority personnel.
  - *Abusive or violent behavior towards Housing Authority personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
  - *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

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

The Housing Authority will consider the existence of mitigating factors, such as loss of employment or other financial difficulties, before denying admission to an applicant based on the failure to meet prior financial obligations.

***Consideration of Rehabilitation***

In determining whether to deny admission for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the Housing Authority may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully [42 U.S.C. 13661].

For this purpose, the Housing Authority may 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. If rehabilitation is not an element of the eligibility determination, the Housing Authority may choose not to consider whether the person has been rehabilitated.

#### Housing Authority Procedure

The Housing Authority will consider the family's history with respect to the following factors and will deny admission to an applicant family if the Housing Authority determines that the family:

- Has a pattern of unsuitable past performance in meeting financial obligations, including rent and utilities within the past five (5) years.
- Has a record of disturbance(s) of neighbors, destruction of property, or living or housekeeping habits (including caring for a unit and premises) at prior residences within the past **five (5) years** which may adversely affect the health, safety, or welfare of other tenants (including respecting the rights of other residents to the peaceful enjoyment of their housing and engaging in criminal activity that is a threat to the health, safety, or property of others) and has not been in compliance with any other essential conditions of tenancy.
- Has engaged in behavior by household member(s) as related to the grounds for denial as detailed in Sections 3-III. B and C.
- Has a record of eviction from housing or termination from residential programs within the past **five (5) years** (considering relevant circumstances) and has not been in compliance with any other essential conditions of tenancy.
- Owes rent or other amounts to this or any other Housing Authority or owner in connection with any assisted housing program.
- Misrepresented or did not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent.
- Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- Has engaged in or threatened violent or abusive behavior toward Housing Authority personnel.
  - *Abusive or violent behavior towards Housing Authority personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

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

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

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

#### **Screening for Eligibility**

Housing Authorities are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the public housing program. This law enforcement agency assists the Housing Authority in complying with HUD requirements and Housing Authority 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 Housing Authority must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

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

#### Housing Authority Procedure

The Housing Authority will perform criminal background checks through local law enforcement and/or third-party vendor for all adult household members.

If the results of the criminal background check indicates there may have been past criminal activity, but the results are inconclusive, the Housing Authority may request a fingerprint card and may request information from the Department of Justice (DOJ).

The Housing Authority may require the adult member who failed the background check to provide additional documentation to clarify results.

Housing Authorities 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)].

#### **Verification of Lifetime Sex Offender Registration**

For any admissions after June 25, 2001 (the effective date of the Screening and Eviction for Drug Abuse and other Criminal Activity final rule), if the reexamination screening reveals that the tenant or a member of the tenant's household is subject to a lifetime sex offender registration requirement, or that the tenant has falsified information or otherwise failed to disclose his or her criminal history on their application and/or reexamination forms, the Housing Authority will propose termination of tenancy. The Housing Authority will use the following process at initial eligibility and at each reexamination determination:

1. Ask households whether any member is subject to a lifetime registration

requirement under a State sex offender registration program.

2. Use the Dru Sjodin National Sex Offender website at [www.nsopw.gov](http://www.nsopw.gov) to confirm that applicants and federal housing assistance recipients are not lifetime registered sex offenders.
3. Aggressively pursue termination of tenancy or assistance, as appropriate, for tenants subject to a state lifetime sex offender registration requirement to the extent currently allowed by law.

If the Housing Authority proposes to deny admission based on a criminal record or sex offender under a State registration requirement, regardless of whether it is a lifetime registration requirement, the Housing Authority 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 960.204].

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

HUD authorizes Housing Authorities to request and obtain information from drug abuse treatment facilities concerning applicants. Specifically, the Housing Authority may require each applicant to submit for all household members who are at least 18 years of age, and for each family head, spouse, or co-head regardless of age, one or more consent forms signed by such household members that requests any drug abuse treatment facility to inform the Housing Authority 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 drug use* 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 Housing Authority has made a final decision to either approve or deny the admission of such person. Any charges incurred by the Housing Authority for information provided from a drug abuse treatment facility may not be passed on to the applicant or tenant.

#### **Housing Authority Procedure**

The Housing Authority will obtain information from drug abuse treatment facilities to determine whether any applicant family's household members are currently engaging in illegal drug activity only when the Housing Authority has determined that the family will be denied admission based on a family member's drug-related criminal activity, and the family claims that the culpable family member has successfully completed a supervised drug or

alcohol rehabilitation program.

### **Resources Used to Check Applicant Suitability**

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

### Housing Authority Procedure

In order to determine the suitability of applicants the Housing Authority will examine applicant history for the past five (5) years. Screening categories and background checks will include:

- *Past Performance in Meeting Financial Obligations - Rent*
  - Housing Authorit(ies) and landlord references for the past five (5) years, including but not limited to, gathering information about past performance meeting rental obligations such as rent payment record, late payment record, whether the Housing Authority/landlord ever began or completed lease termination for non-payment, and whether utilities were ever disconnected in the unit. Housing Authorit(ies) and landlords will be asked if they would rent to the applicant family again.
  - If an applicant has no rental payment history, the Housing Authority will check court records of eviction actions, 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 Housing Authority 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.
- *Past Performance in Meeting Financial Obligations - Utilities*
  - 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 previous landlords or the utility company does not respond to requests from the Housing Authority, 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*

- Housing Authority and landlord references for the past five (5) years, gathering information on whether the applicant kept a unit clean, safe and sanitary; whether they violated health or safety codes; whether any damage was done by the applicant to a current or previous unit or the development, and, if so, how much the repair of the damage cost; whether the applicant's housekeeping caused insect or rodent infestation; and whether the neighbors complained about the applicant or whether the police were ever called because of disturbances.
- Police and court records within the past five (5) 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.
- Home visits may be used to determine the applicant's ability to care for the unit.
- *Has a record of eviction from housing or termination from residential programs within the past five (5) years (considering relevant circumstances) and has not been in compliance with any other essential conditions of tenancy.*
  - Housing Authority and landlord references for the past five (5) years
  - The Housing Authority will review the Criminal Background Check Report and Credit Report for the past five (5) years
- *Owes rent or other amounts to this or any other Housing Authority or owner in connection with any assisted housing program*
  - The Housing Authority will obtain information from HUD's EIV Bad Debts module to determine if the applicant owes monies to another Housing Authority.
  - Housing Authorit(ies) and landlord references for the past five (5) years, including but not limited to, gathering information about past performance meeting rental obligations such as rent payment record, late payment record, whether the Housing Authorit(ies) or landlord ever began or completed lease termination for non-payment, and whether utilities were ever disconnected in the unit. Housing Authorit(ies) and landlords will be asked if they would rent to the applicant family again.
  - If an applicant has no rental payment history the Housing Authority will check court records of eviction actions, 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 Housing Authority 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.

- *Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.*
- The Housing Authority will review the Criminal Background Check Report and Credit Report for the past five (5) years.

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

#### Housing Authority Procedure

The Housing Authority 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 Housing Authority to consider all relevant circumstances when deciding whether to deny admission based on an applicant's past history except in the situations for which denial of admission is mandated (see Section 3-III.B).

In the event the Housing Authority 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, the Housing Authority may give consideration to factors, which might indicate a reasonable probability of favorable future conduct.

#### Housing Authority Procedure

The Housing Authority will consider the following factors when making its decision:

- Whether the applicant's offense bears a relationship to the safety and security of other residents.
- The level of violence, if any, of the offense for which the applicant was convicted.
- The length of time since the conviction.
- The number of convictions that appear on the applicant's criminal history.
- If the applicant is now in recovery for an addiction, whether the applicant was under the influence of alcohol or illegal drugs at the time of the offense;
- Any rehabilitation efforts that applicant has undertaken since the time of conviction.



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 Housing Authority 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 Housing Authorit(ies) 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.

#### Housing Authority Procedure

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 Housing Authority request.

#### **Reasonable Accommodation**

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

#### Housing Authority Procedure

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of admission, the Housing Authority will determine whether the behavior is related to the disability. If so, upon the family's request, the Housing Authority will determine whether alternative measures are appropriate as a reasonable accommodation. The Housing Authority will only consider reasonable accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of admission. See Chapter 2-II.B-Fair Housing and Equal Opportunity, Definition of Reasonable Accommodation.

### **3-III.F. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING [109th Congress Public Law 162, Pub.L. 109-162]**

The Violence Against Women Reauthorization Act of final rule published October 27, 2010 (VAWA) and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) 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, sexual assault, or stalking, regardless of sex, gender identity, or sexual orientation. 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 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, sexual assault, 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, sexual assault, or stalking.

Please refer to Chapter 19, Violence Against Women Act for more information.

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

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

If a Housing Authority uses a criminal record or sex offender registration information obtained under 24 CFR Part 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 Housing Authority 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)].

#### Housing Authority Procedure

If, based on a criminal record or sex offender registration information an applicant family appears to be ineligible, the Housing Authority 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 ten (10) business days to dispute the accuracy and relevance of the information. If the family does not contact the Housing Authority to dispute the information within that ten (10) day period, the Housing Authority 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.

## 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 twelve (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 [42 U.S.C.6001(8)], which defines developmental disability in functional terms as:
- A severe, chronic disability of a person five (5) years of age or older which:
  - Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - Is manifested before the person attains age twenty-two (22);
  - Is likely to continue indefinitely;
  - Results in substantial functional limitations in three or more of the following areas of major life activity:
    - i. self-care,
    - ii. receptive and responsive language,
    - iii. learning,
    - iv. mobility,
    - v. self-direction,
    - vi. capacity for independent living, and
    - vii. economic self-sufficiency;
- Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age five (5), inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.
- 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.
- Persons with the Acquired Immuno-Deficiency 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 disabilities.

**Individual with Disabilities [24 CFR 8.3]**

*Individual with disabilities* means any person who has a physical or mental impairment that

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

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

## Chapter 4 APPLICATIONS, WAITING LIST AND TENANT SELECTION

### INTRODUCTION

HUD requires the Housing Authority to place all eligible families that apply for public housing program on a waiting list. When a family wishes to reside in public housing, the family must submit a pre- application that provides the Housing Authority with the information needed to determine the family's eligibility. When a unit becomes available, the Housing Authority must select applicants from the waiting list in accordance with HUD requirements and Housing Authority policies as stated in its Admissions and Continued Occupancy Procedure (ACOP) and its Annual Plan.

The Housing Authority is required to adopt a clear approach to accepting pre-applications, placing applicants on the waiting list, and selecting applicants from the waiting list, and must follow this approach consistently. The actual order in which applicants are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the Housing Authority to receive preferential treatment.

HUD regulations require that the Housing Authority comply with all equal opportunity requirements and it must affirmatively further fair housing goals in the administration of the program [24 CFR 960.103]. Adherence to the selection policies described in this chapter ensures that the Housing Authority will be in compliance with all relevant fair housing requirements; see Chapter 2-Fair Housing and Equal Opportunity for more information.

This chapter describes HUD and Housing Authority procedures for accepting pre-applications, managing the waiting list and selecting families from the waiting list. The Housing Authority procedures for assigning unit size and making unit offers are contained in Chapter 5-Occupancy Standards and Unit Offers. Together, Chapter 4-Applications, Waiting List and Tenant Selection and Chapter 5-Occupancy Standards and Unit Offers of the ACOP comprise the Housing Authority's Tenant Selection and Assignment Plan (TSAP).

The policies outlined in this chapter are organized into three sections, as follows:

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

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

Part III: Tenant Selection. This part describes the policies that guide the Housing Authority in selecting applicants from the waiting list as units become available. It also specifies how in-person interviews will be used to ensure that the Housing Authority has the information needed to make a final eligibility determination.

## **PART I: THE APPLICATION PROCESS**

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

This part describes the policies that guide the Housing Authority's efforts to distribute and accept pre-applications. Based upon the information provided in the pre-application, preliminary determinations of applicant family eligibility will affect placement of the applicant on the waiting list. This part also describes the Housing Authority's obligation to ensure the accessibility of the pre-application process.

### **4-I.B. APPLYING FOR ASSISTANCE [24 CFR 1.4, 24 CFR Part 5 and 24 CFR 960.202(a)(2)(iv); PIH 2012-36 (HA)]**

Any family that wishes to reside in public housing must apply for admission to the program. HUD permits the Housing Authority to determine the format and content of its pre-applications, as well how such pre-applications will be made available to interested families and how applications will be accepted by the Housing Authority.

#### Housing Authority Procedure

Depending upon the length of time that applicants may need to wait to be housed, the Housing Authority may use a one-step or two-step pre-application process.

A one-step process may be used when it is expected that a family will be selected from the waiting list within sixty (60) days of the date of pre-application. At full application, the family must provide all of the information necessary to establish family eligibility and the amount of rent the family will pay.

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

The Authority is permitted by HUD to determine the format and content of pre-applications. For the purpose of establishing a waiting list, pre-applications will be accepted from any family wishing to apply for Public Housing. The Authority may select one or more of the following methods for pre-applications:

1. Online
2. By phone
3. By mail
4. Submitted in person
5. By other method as described in the public announcement

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

The Housing Authority must take a variety of steps to ensure that the application process

is accessible to persons who might have difficulty complying with the Housing Authority application process.

#### **Disabled Populations [24 CFR Part 8]**

The Housing Authority must provide reasonable accommodation to the needs of individuals with disabilities. The application taking facility and the application process must be fully accessible, or the Housing Authority must provide an alternate approach that provides equal access to the application process. Chapter 2, Part II, Fair Housing and Equal Opportunity, Policies Related to Persons with Disabilities provides additional information of the Housing Authority's policies related to providing reasonable accommodations for people with disabilities.

#### **Limited English Proficiency [24 CFR Part 1]**

Housing Authorities are required to take reasonable steps to ensure meaningful access to their programs and activities by persons with Limited English Proficiency (LEP). Chapter 2, Part III, Fair Housing and Equal Opportunity, Improving Access to Services for Persons with Limited English Proficiency (LEP) provides additional information on the Housing Authority's policies related to ensuring access to people with LEP.

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

The Housing Authority will review each completed pre-application received and make a preliminary assessment of the family's eligibility. The Housing Authority must place on the waiting list applicants for whom the list is open unless the Housing Authority determines the applicant to be ineligible. Where the applicant is determined to be ineligible, the Housing Authority must notify the applicant in writing [24 CFR 960.208(a)]. When the applicant is determined to be eligible, the applicant will be placed on the waiting list.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list.

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

##### Housing Authority Procedure

When the waiting list is open, any family asking to be placed on the waiting lists will be given the opportunity to complete a pre-application. The Housing Authority will send written notification to the applicant verifying placement on the waiting list.

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 Housing Authority preference(s) and the date and time, the completed pre-application is received by the Housing Authority.

The Housing Authority 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-



Occupancy Standards and Unit Offers for more information). 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 Housing Authority standards and local codes).

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

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

The Housing Authority must have procedures 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 Housing Authority may structure its waiting list and how families must be treated if they apply for public housing at a Housing Authority that administers more than one assisted housing program.

### **4-II.B. ORGANIZATION OF THE WAITING LIST**

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

#### Housing Authority Procedure

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

- Name and social security number of head of household;
- Unit size required (number of family members);
- Amount of annual income;
- Date and time of pre-application or application number;
- Household type (near-elderly, elderly, disabled);
- Admission preference, if any; and
- Race and ethnicity of the head of household

#### Housing Authority Procedure

The Housing Authority will maintain a site-based waiting list for its public housing developments.

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 Housing Authority 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)(ii)].

HUD permits, but does not require, that Housing Authority maintain a single merged waiting list for their public housing, tenant-based, and other subsidized housing programs [24 CFR 982.205(a)(1)].

#### Housing Authority Procedure

The Housing Authority will not merge the public housing waiting list with the waiting list for any other program the Housing Authority operates.

#### **4-II.C. OPENING AND CLOSING THE WAITING LIST Closing the Waiting List**

The Housing Authority is permitted to close the waiting list, in whole or in part, if it has an adequate pool of families to fill its developments. The Housing Authority may close the waiting list completely, or restrict intake by preference, type of project, or by size and type of dwelling unit.

#### Housing Authority Procedure

The Housing Authority may cease accepting pre-applications if there are enough applicants to fill anticipated vacancies for the next twenty-four (24) months. The waiting list may not be closed if it would have a discriminatory effect inconsistent with applicable civil rights laws.

The Housing Authority may announce the closing of the waiting list by public notice same method as opening. The open period shall be long enough to achieve a waiting list adequate to cover projected turnover and new allocations over the next 24 months. The Housing Authority will give at least ten (10) calendar day notice prior to closing the list. When the period for accepting pre-applications is over, the Housing Authority will add the new applicants to the list by:

- Separating the new applicants into groups based on preferences and ranking applicants within each group by date and time of application.

#### **Reopening the Waiting List**

If the waiting list has been closed, it may be reopened at any time. The Housing Authority will publish a notice in accordance with the Housing Authority's Language Access Plan (LAP) in *The Merced Sun Star*, a local newspaper of general circulation, and also by minority media, and other suitable means, including the Housing Authority's website at [www.merced-pha.com](http://www.merced-pha.com). Such notice must comply with HUD fair housing requirements. The Housing Authority should specify who may apply, and where and when pre-applications will be received.

#### Housing Authority Procedure

The Housing Authority will announce the reopening of the waiting list at least ten (10) business days prior to the date pre-applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice. The notice will specify where, when, and how pre-applications are to be received.

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

The Housing Authority should conduct outreach as necessary to ensure that the Housing Authority has a sufficient number of applicants on the waiting list to fill anticipated

vacancies and to assure that the Housing Authority is affirmatively furthering fair housing and complying with the Fair Housing Act.

Because HUD requires the Housing Authority to serve a specified percentage of extremely low-income families, the Housing Authority may need to conduct special outreach to ensure that an adequate number of such families apply for public housing.

Housing Authority 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.

Housing Authority 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 pre-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

#### Housing Authority Procedure

The Housing Authority will monitor the characteristics of the population being served and the characteristics of the population as a whole in the Housing Authority'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**

##### Housing Authority Procedure

While the applicant is on the waiting list, the applicant must inform the Housing Authority, within ten (10) calendar days, of changes in family size or composition, preference status, income, or contact information, including current residence, mailing address, and phone number. The changes must be submitted through the Applicant Portal ([www.merced-](http://www.merced-)

pha.com).

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 [24 CFR 982.204(c)]**

HUD requires the Housing Authority to establish procedures to use when removing applicant names from the waiting list.

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

##### Housing Authority Procedure

The waiting list will be purged as necessary. The Housing Authority may notify applicants by mail to ensure that the waiting list is current and accurate. The mailing will ask for confirmation of continued interest.

Any mailings to the applicant, which require a response, will state that failure to respond within ten (10) calendar days will result in the applicant's name being removed from the waiting list. An extension of thirty (30) days to respond will be granted, if requested and needed as a reasonable accommodation for a person with a disability. See Chapter 2-Fair Housing and Equal Opportunity for further information regarding reasonable accommodations.

If a letter is returned by the Post Office without a forwarding address, the applicant will be removed from the waiting list without further notice, and the envelope and letter will be maintained in the file. If a letter is returned with a forwarding address, the Housing Authority will make no more than one (1) attempt to forward the letter to the new forwarding address before removing the applicant from the waiting list(s).

If an applicant is removed from the waiting list for failure to respond, they will not be entitled to reinstatement unless the Director of Housing Programs or his/her designee determines there were circumstances beyond the person's control.

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

##### Housing Authority Procedure

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

If the Housing Authority determines that the applicant is not eligible for admission (see Chapter 3-Eligibility) at any time while the applicant is on the waiting list the applicant will be removed from the waiting list.

If an applicant is removed from the waiting list because the Housing Authority has determined the applicant is not eligible for admission, a notice will be sent to the applicant's address of record as well as to any alternate address provided on the initial application or

contact form. The notice will state the reasons the applicant was removed from the waiting list and will inform the applicant how to request an informal review regarding the Housing Authority's decision (see Chapter 14-Grievances and Appeals) [24 CFR 960.208(a)].

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

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

The Housing Authority must establish tenant selection policies for families being admitted to public housing [24 CFR 960.201(a)]. The Housing Authority must not require any specific income or racial quotas for any developments [24 CFR 903.2(d)]. The Housing Authority must not assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status or national origin for purposes of segregating populations [24 CFR 1.4(b)(1)(iii) and 24 CFR 903.2(d)(1)].

The order in which applicants will be selected from the waiting list depends on the selection method chosen by the Housing Authority and is impacted in part by any selection preferences that the applicant qualifies for. The availability of units also may affect the order in which applicants are selected from the waiting list.

The Housing Authority must maintain a clear record of all information required to verify that the applicant is selected from the waiting list according to the Housing Authority's selection policies [24 CFR 960.208(e)(2)]. The Housing Authority's policies must be posted any place where the Housing Authority receives pre-applications. The Housing Authority must provide a copy of its tenant selection policies upon request to any applicant or tenant. The Housing Authority may charge the applicant for providing a copy of its tenant selection policies [24 CFR 960.202(c)(2)].

#### Housing Authority Procedure

When an applicant or resident family requests a copy of the Housing Authority's tenant selection procedure, the Housing Authority will provide copies to them at a charge of \$0.35 per page.

#### **4-III.B. SELECTION METHOD**

Housing Authority must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the Housing Authority will use.

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

Housing Authorities 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 Housing Authority to establish other local preferences, at its discretion. Any local preferences established must be consistent with the Housing Authority plan and the relevant jurisdiction 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)].

## Housing Authority Procedure

The Housing Authority will use the following local preferences:

**100 points: Veteran Preference:** Current members of the military, veterans, or surviving spouses of veterans may qualify for this preference. Applicants must provide proof of honorable discharge. If discharge is less than honorable, applicant must provide proof of eligibility to receive veteran benefits.

**10 points: Involuntarily Displaced:** Families who have been displaced due to a locally declared disaster, state declared disaster, federally declared disaster or other national emergency. It will also be given to those families that are involuntarily displaced by Authority action (emergency relocation, extensive rehabilitation and insufficient funding or other local disasters) as approved by Executive Director. New applicants to the Public Housing Program must be a family displaced within the last six (6) months by a natural disaster, including disasters recognized by the Federal government, which extensively damaged or destroyed their dwelling or:

- Is dilapidated as cited by city/county officials of a local code enforcement office and does not provide safe, adequate shelter, has one or more critical defects or a combination of defects requiring considerable repair or endangers the health, safety, and well-being of the family.
- Has been declared unfit for habitation by a government agency.

**15 points: Residency Preference:** Families who live, work, or have been hired to work within Merced County and/or residents moving to Merced County who currently participate in an education or training program designed to prepare the individual for the job market at time of selection from the waiting list.

Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area.

HUD regulations state that a residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

**10 points: Elderly or Disabled Person Preference:** An elderly preference applies if the head, spouse or co-head are a person who is age 62 or older. A disabled person preference applies if the head, spouse or co-head receives Social Security or Supplemental Security benefits or otherwise meets the definition of disabled as defined under Section 223 of the Social Security Act.

The Housing Authority will use the following to select among applicants on the waiting list with the same preference status:

- Date and time of receipt of a completed application.

## **SPECIAL ADMISSIONS**

If HUD awards a Housing Authority program funding that is targeted for specifically named families, the Housing Authority will admit these families under a special admission procedure. Special admission families will be admitted outside of the regular waiting list process. They do not have to qualify for any preferences, nor are they required to be on the program waiting list.

The Housing Authority maintains separate records of these admissions.

The following are examples of types of program funding that may be designated by HUD for families living in a specified unit:

- A family displaced because of demolition or disposition of a public or Indian housing project;
- A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;
- For housing covered by the Low-Income Housing Preservation and Resident Home-ownership Act of 1990;
- A family residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term; and
- A non-purchasing family residing in a HOPE 1 or HOPE 2 project.

**Income Targeting Requirement [24 CFR 960.202(b)]**

Not less than 40 percent of the families admitted to the Housing Authority's public housing program during the Housing Authority's fiscal year from the Housing Authority's waiting list shall be Extremely Low Income (ELI) families. This is called the "basic targeting requirement." To ensure this requirement is met, the Housing Authority may skip non-ELI families on the waiting list in order to select an ELI family.

Admission of ELI families to the Housing Authority's Housing Choice Voucher Program during the same Housing Authority fiscal year is credited against the basic targeting requirement.

A Housing Authority must comply with both the targeting requirement and the deconcentration requirements found in part 24 CFR 903.

**Credit for Admissions to the Housing Authority's Housing Choice Voucher Program**

If admissions of ELI families to the Housing Authority's Housing Choice Voucher Program during a Housing Authority's fiscal year exceeds the seventy-five (75) percent minimum targeting requirement for the Housing Authority's Housing Choice Voucher Program [24

CFR 982.201(b)(2)], such excess shall be credited (subject to the limitations in 24 CFR 982.201 (b)(2)(ii)) against the Housing Authority's 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 shall not exceed the lower of:

- Ten (10) percent of public housing waiting list admissions during the Housing Authority fiscal year;
- Ten (10) percent of waiting list admission to the Housing Authority's Housing Choice Voucher Program during the Housing Authority fiscal year; or
- The number of qualifying low-income families who commence occupancy during the fiscal year of the Housing Authority's public housing units located in census tracts with a poverty rate of thirty (30) percent or more. For this purpose, qualifying low income family means a low-income family other than an extremely low income family.

#### Housing Authority Procedure

The Housing Authority will monitor its progress in meeting the ELI requirement throughout the fiscal year. ELI families will be selected ahead of other eligible families on an as-needed basis to ensure that the income targeting requirement is met.

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

The Housing Authority's admission Procedure must be designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. A statement of the Housing Authority's deconcentration policies must be included in its annual plan [24 CFR 903.7(b)].

The Housing Authority's deconcentration Procedure must comply with its obligation to meet the income targeting requirement [24 CFR 903.2(c)(5)].

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

Developments not subject to deconcentration and income mixing requirements:

- Public housing developments operated by a Housing Authority with fewer than 100 public housing units;
- Public housing developments operated by a Housing Authority who house only elderly or disabled families, or both;
- Public housing developments operated by a Housing Authority which consist of only one general occupancy, family public housing development;



- Public housing developments approved for demolition or for conversion to tenant-based public housing;
- Public housing developments approved for demolition or for conversion to tenant-based assistance; and
- Public housing developments which include public housing units operated in accordance with HUD-approved mixed-finance plan using HOPE VI, Choice Neighborhoods, Jobs Plus Pilot Program or public housing funds awarded before the effective date of this rule provided that the Housing Authority certifies (and includes reason for this certification) as part of the PHA Plan (which may be accomplished either in the Annual Plan submission or as a significant amendment to its PHA Plan) that exemption from the regulation is necessary to honor an existing contractual agreement or be consistent with a mixed finance plan, including provisions regarding the incomes of public housing residents to be admitted to that development, which has been developed in consultation with residents with rights to live at the affected development and other interested persons. [24 CFR 903.2(b)].

### **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 Housing Authority must comply with the following steps:

- *Step 1.* A Housing Authority shall determine the average income of all families residing in all the Housing Authority's covered developments. A Housing Authority may use median income, instead of average income, provided that the Housing Authority includes a written explanation in its PHA Annual Plan justifying use of median income in the PHA's Annual Plan.

### Housing Authority Procedure

The Housing Authority uses median income instead of average income.

- *Step 2.* A Housing Authority shall determine the average income of all families residing in each covered development. In determining average income for each development, a Housing Authority has the option of adjusting its income analysis for unit size in accordance with procedures prescribed by HUD.
- *Step 3.* A Housing Authority shall determine whether each of its covered developments falls above, within or below the Established Income Range (EIR). The EIR is from 85 to 115 percent (inclusive) of the average family income (the Housing Authority -wide average income for covered developments as defined in Step 1), except that the upper limit shall never be less than the income at which a family would be defined as an extremely low income family under 24 CFR 5.603(b).
- *Step 4.* A Housing Authority with covered developments having average incomes outside the EIR may explain or justify the income profile for these developments as

being consistent with and furthering two sets of goals:

- The goals of deconcentration of poverty and income mixing as specified by the statute (bringing higher income tenants into lower income developments and vice versa); and
- The local goals and strategies contained in the PHA Annual Plan. Elements of explanations or justifications that may satisfy these requirements may include, but shall not be limited to the following:
  - The covered development or developments are subject to consent decrees or other resident selection and admission plans mandated by court action;
  - The covered development or developments are part of the Housing Authority's programs, strategies or activities specifically authorized by statute, such as mixed-income or mixed-finance developments, homeownership programs, self-sufficiency strategies, or other strategies designed to deconcentrate poverty, promote income mixing in public housing, increase the incomes of public housing residents, or the income mix is otherwise subject to individual review and approval by HUD;
  - The covered development's or developments' size, location, and/or configuration promote income deconcentration, such as scattered site or small developments; or
  - The income characteristics of the covered development or developments are sufficiently explained by other circumstances.
- *Step 5.* Where the income profile for a covered development is not explained or justified in the PHA Annual Plan submission, the Housing Authority shall include in its admission Procedure its specific Procedure to provide for deconcentration of poverty and income mixing in applicable covered developments. Depending on local circumstances, a Housing Authority's deconcentration Procedure (which may be undertaken in conjunction with other efforts such as efforts to increase self-sufficiency or current residents) may include but is not limited to providing for one or more of the following actions:
  - Providing incentives designed to encourage families with incomes below the EIR to accept units in developments with incomes above the EIR, or vice versa, including rent incentives, affirmative marketing plans, or added amenities;
  - Targeting investment and capital improvements toward developments with an average income below the EIR to encourage applicant families whose income is above the EIR to accept units in those developments;

- Establishing a preference for admission of working families in developments below the EIR;
- Skipping a family on the waiting list to reach another family in an effort to further the goals of the Housing Authority's deconcentration Procedure; or
- Providing such other strategies as permitted by statute and determined by the Housing Authority in consultation with the residents and the community, through the PHA Annual Plan process, to be responsive to the local context and the Housing Authority's strategic objectives.

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

HUD shall consider a Housing Authority to be in compliance with this 24 CFR 903.2 if:

1. The Housing Authority's income analysis shows that the Housing Authority has no general occupancy family developments to which the deconcentration requirements apply; that is, the average incomes of all covered developments are within the EIR;
2. The Housing Authority has covered developments with average incomes above or below the EIR and the Housing Authority provides a sufficient explanation in its Annual Plan that supports that the income mix of such development or developments is consistent with and furthers the goal of deconcentration of poverty and income mixing and also the locally determined goals of the PHA's Annual and Five Year Plans, and the Housing Authority therefore need not take further action to deconcentrate poverty and mix incomes; or
3. The Housing Authority's deconcentration Procedure provides specific strategies the Housing Authority will take that can be expected to promote deconcentration of poverty and income mixing in developments with average incomes outside of the EIR.

Housing Authority Procedure

For developments above or below the EIR the Housing Authority will take the following actions to provide for deconcentration of poverty and income mixing:

- Families will be selected from the waiting list based on preference. Among applicants with the same preference, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the Housing Authority.
- When selecting applicants from the waiting list, the Housing Authority will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. The Housing Authority will offer the unit to the

highest-ranking applicant who qualifies for that unit size or type, or that requires the accessibility features.

- By matching unit and family characteristics, it is possible that families who are lower on the waiting list may receive an offer of housing ahead of families with an earlier date and time of pre-application or higher preference status.
- Factors such as deconcentration or income mixing and income targeting will also be considered in accordance with HUD requirements and Housing Authority Procedure.

#### **Order of Selection [24 CFR 960.206(e)]**

The Housing Authority's system of preferences may select applicants either according to the date and time of application or by a random selection process.

#### Housing Authority Procedure

Applicants will be selected from the waiting list based on preferences. Among applicants with the same preference, applicants will be selected on a first-come, first-served basis according to the date and time their completed pre-application is received by the Housing Authority.

When selecting applicants from the waiting list, the Housing Authority will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. The Housing Authority will offer the unit to the highest ranking applicant who qualifies for that unit size or type.

By matching unit and family characteristics, it is possible that applicants who are lower on the waiting list may receive an offer of housing ahead of applicants with an earlier date and time of application or higher preference status.

Factors such as deconcentration or income mixing and income targeting will also be considered in accordance with HUD requirements and Housing Authority Procedure.

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

When an applicant has been selected from the waiting list, the Housing Authority must notify the family to start the process of determining eligibility.

#### Housing Authority Procedure

The Housing Authority will notify the family by first class mail when they are selected from the waiting list.

- A 7-Day Letter of Interest is sent to the applicant selected from the wait list. The following documents are included with the 7-Day Letter of Interest:
  - i. Criminal Background Check Certification Form
  - ii. Consumer History Application (for each family member 18 years old or older)

- If the 7-Day letter is returned to the Housing Authority with no forwarding address, the applicant will be removed from the waiting list without further notice. Such failure to act on the part of the applicant prevents the Housing Authority from making an eligibility determination; therefore, no informal hearing will be offered.
- If the 7-day letter is returned with a forwarding address, the Housing Authority will make no more than one (1) attempt to forward the letter to the new forwarding address before removing the applicant from the wait list for failure to respond.
- All family members 18 years of age or older must each sign and return the above documents along with a copy of a valid driver's licenses (or state-issued photo identification) and copies of social security cards.
- The signed criminal background certification form will remain with file and request submitted to the local law enforcement for processing. Alternatively, the criminal background check and the credit check may be done by a third-party vendor.
- If the applicant passes the criminal background check, a credit check is completed for each member of the household 18 years old or older.
- The applicant will be notified in writing of ineligibility, if the applicant fails the criminal background check. Denied applicants may submit a written request for a review.
- If the applicant passes the credit and criminal background checks, a full application interview appointment will be scheduled to proceed with eligibility determination (See Section 4-III.D-The Application Interview).
- If the applicant does not provide all of the required documents to process the full application interview, the applicant will be sent a notice listing documents still needed to determine eligibility.
- If a notification letter is returned to the Housing Authority with no forwarding address, the applicant will be removed from the waiting list without further notice. Such failure to act on the part of the applicant prevents the Housing Authority from making an eligibility determination; therefore, no informal hearing will be offered.
- If the Notice Pending Eligibility (NPE) is returned with a forwarding address, the Housing Authority will make no more than one (1) attempt to forward the letter to the new forwarding address before removing the applicant from the wait list.

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

HUD recommends that the Housing Authority obtain the information and documentation needed

to make a program eligibility determination through a private interview. **Being invited to attend an interview does not constitute admission to the program.**

Reasonable accommodations 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)].

#### Housing Authority Procedure

Applicants selected from the waiting list are required to participate in a program eligibility interview (full application interview). 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 Housing Authority will provide translation services in accordance with the Housing Authority's LEP and Language Access Plan (LAP) plans.

The household composition cannot deviate from the last update provided by the family unless the family member is a result of birth, adoption, or court awarded custody.

- A full application interview letter will be mailed to the applicant. If the applicant is unable to attend a scheduled interview, the applicant should contact the Housing Authority in advance of the interview to schedule a new appointment.
- In all circumstances, if an applicant does not attend a scheduled interview, the Housing Authority will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without Housing Authority approval will have their pre- applications made inactive (and removed from the waiting list) based on the applicant's failure to supply information needed to determine eligibility.
- The second appointment letter will state that failure to appear for the appointment without a request to reschedule will be interpreted to mean that the applicant is no longer interested and their application will be made inactive (and removed from the waiting list). Such failure to act on the part of the applicant prevents the Housing Authority from making an eligibility determination; therefore, the Housing Authority will not offer an informal hearing.
- The head of household, the spouse/co-head, and all other adult members of the household will be required to attend the full application interview together unless otherwise noted by means of a reasonable accommodation.
- The applicant must provide the information necessary to establish the applicants eligibility, including suitability, and to determine the appropriate amount of rent the family will pay. The applicant must also complete required forms, provide required signatures, and submit required documentation. If any materials are missing, the Housing Authority will provide the family with a written list of items that must be submitted.
- Any required documents or information that the applicant is unable to provide at the full application interview must be provided within ten (10) business days of the

interview (See Chapter 7 Verification for additional information about longer submission deadlines for particular items, including documentation of Social Security numbers and eligible noncitizen status).

- If the applicant 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 of admission (see Chapter 3 Part III, Eligibility, Denial of Admission for more information).
- The full application interview will be conducted only if the head of household provides appropriate documentation of legal identity for all household members (Chapter 7-II.G.-Verification provides a description of proper documentation of legal identity).
- If the family representative does not provide the required documentation, the appointment may be rescheduled (within ten (10) business days) when the proper documents have been obtained.
- If the applicant is claiming a waiting list preference, the applicant must provide documentation to verify their eligibility for a preference (see Chapter 7-Verification).
- If the applicant is verified by the Housing Authority eligible for the preference, the Housing Authority will proceed with the application interview.
- If the Housing Authority determines the applicant is not eligible for the preference, the interview will not proceed and the applicant will be placed back on the waiting list according to the date and time of their application.

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

The Housing Authority must verify all information provided by the applicant (Chapter 7-Verification). Based on verified information related to the eligibility requirements, including Housing Authority suitability standards, the Housing Authority must make a final determination of eligibility (Chapter 3-Eligibility).

When a determination is made that an applicant 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)].

#### Housing Authority Procedure

The Housing Authority will notify an applicant in writing of their eligibility within ten (10) business days of the eligibility determination and will provide the approximate date of occupancy insofar as that date can be reasonably determined.

The Housing Authority must promptly notify any applicant 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)].

If the Housing Authority 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 Housing Authority can move to deny the application. See Chapter 3- Eligibility (Section 3-III.F) for the Housing Authority's Procedure regarding such circumstances.

#### Housing Authority Procedure

If the Housing Authority determines that the applicant is ineligible, the Housing Authority will send written notification of the ineligibility determination within ten (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- Grievances and Appeals).



## **Chapter 5 OCCUPANCY STANDARDS AND UNIT OFFERS**

### **INTRODUCTION**

The Housing Authority must establish policies governing occupancy of dwelling units and offering dwelling units to qualified families.

This chapter contains policies for assigning unit size and making unit offers. The Housing Authority's waiting list and selection policies are contained in Chapter 4-Applications, Waiting List and Tenant Selection. Together, Chapter 4-Applications, Waiting List and Tenant Selection and Chapter 5-Occupancy Standards and Unit Offers, of the ACOP comprise the Housing Authority's Tenant Selection and Assignment Plan (TSAP).

Policies in this chapter are organized in two parts.

Part I: Occupancy Standards. This part contains the Housing Authority's standards for determining the appropriate unit size for families of different sizes and types.

Part II: Unit Offers. This part contains the Housing Authority's policies for making unit offers, and describes actions to be taken when unit offers are refused.

### **PART I: OCCUPANCY STANDARDS**

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

Occupancy standards are established by the Housing Authority to ensure that units are occupied by families of the appropriate size. This Procedure 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 Housing Authority 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 allowed.

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

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

HUD does not specify the number of persons who may live in public housing units of various sizes. Housing Authorities are permitted to develop appropriate occupancy standards as long as the standards do not have the effect of discriminating against families with children.

Although the Housing Authority does determine the size of unit the family qualifies for under the occupancy standards, the Housing Authority does not determine who shares a bedroom/sleeping room. The Housing Authority's occupancy standards for determining unit size must be applied in a manner consistent with fair housing requirements.

#### Housing Authority Procedure

The Housing Authority will use the same occupancy standards for each of its developments. The Housing Authority’s occupancy standards are as follows:

- The Housing Authority will assign one bedroom for each two persons within the household, except in the following circumstances:
  - Persons of the opposite sex (other than spouses, and children under age six) will not be required to share a bedroom.
  - Persons of different generations will not be required to share a bedroom.
  - Live-in aides will be allocated a separate bedroom. No additional bedrooms will be provided for the live-in aide’s family.
  - Single person families will be allocated a one-bedroom unit.
  - Foster children will be included in determining unit size.

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

BEDROOM SIZE	MINIMUM NUMBER OF PERSONS	MAXIMUM NUMBER OF PERSONS
1	1	2
2	2	4
3	3	6
4	4	8
5	5	10

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

**Types of Exceptions**

Housing Authority Procedure

The Housing Authority will consider granting exceptions to the occupancy standards at the family’s request if the Housing Authority determines the exception is justified by the relationship, age, sex, 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.

When evaluating exception requests the Housing Authority will consider the size and configuration of the unit. In no case will the Housing Authority 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 (2) years from the date of admission, unless they have a subsequent change in family size or composition.

To prevent vacancies, the Housing Authority 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**

#### Housing Authority Procedure

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 Housing Authority will encourage the resident to make the request in writing using a reasonable accommodation request form. However, the Housing Authority will consider the exception request any time the family indicates that a reasonable 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.

The Housing Authority will notify the family in writing of the Housing Authority's decision within ten (10) business days once the required verification/documentation is received (Please refer to Chapter 2, Part II, Policies Related to Persons with Disabilities for more information on Reasonable Accommodation.)

## **PART II: UNIT OFFERS**

[24 CFR 1.4(b)(2)(ii) and 24 CFR 960.208]

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

The Housing Authority 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 Housing Authority must offer the dwelling unit to an applicant based on the bedroom size and the unit that has been vacant the longest. The Housing Authority will offer the unit until it is accepted. This section describes the Housing Authority'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 Housing Authority's policies for offering units with accessibility features.

#### Housing Authority Procedure

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

### **5-II.B. NUMBER OF OFFERS**

### Housing Authority Procedure

The Housing Authority has adopted a "two offer plan" for offering units to applicants. Under this plan, the Housing Authority will determine how many locations within its jurisdiction have available units of suitable size and type in the appropriate type of project. The number of unit offers will be based on the distribution of vacancies. If a suitable unit is available:

- Each applicant gets two offers.
- Applicants may have an incentive to accept the unit offered.
- Unless the applicant has good cause for refusing the first and second offer, the applicant should accept it or be removed from the waiting list.
- The Housing Authority's record-keeping requirement is limited to the offer made, whether it is accepted or refused, and whether the applicant has good cause for refusal (and is entitled to another offer).

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

#### Housing Authority Procedure

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

### **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)].

#### Housing Authority Procedure

Applicants may refuse to accept a unit offer for "*good cause.*" *Good cause* includes but is not limited to 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.

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 on the waiting list until the family receives an offer for which they do not have good cause to refuse. The Housing Authority will require documentation to support the applicant's unit refusal for good cause.

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 Housing Authority'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.

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

#### Housing Authority Procedure

When an applicant rejects the final unit offer without good cause, the Housing Authority 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-Grievances and Appeals for more information).

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 Housing Authority opens the waiting list.

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

The Housing Authority 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 Housing Authority must offer such units:

- First, to a current resident of another unit of the same development, or other public housing development under the Housing Authority'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 Housing Authority may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

Housing Authority Procedure

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 Housing Authority will offer the unit to a non-disabled applicant.

When offering an accessible unit to a non-disabled applicant, the Housing Authority will require the applicant to agree to move to an available non-accessible unit within thirty (30) calendar days when either a current resident or an applicant need 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.

**Chapter 6**  
**INCOME AND RENT DETERMINATIONS**  
**24 CFR Part 5 and 24 CFR 960**

A family's income determines eligibility for assistance and is also used to calculate the family's rent payment. The Housing Authority will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and Housing Authority policies related to these topics in three parts as follows:

Part I: Annual Income. HUD regulations specify the sources of income to include and exclude to determine a family's annual income. These requirements and Housing Authority policies for calculating annual income are found in Part I.

Part II: Adjusted Income. Once annual income has been established HUD regulations require the Housing Authority to subtract from annual income any of five (5) mandatory deductions for which a family qualifies. These requirements and Housing Authority policies for calculating adjusted income are found in Part II.

Part III: Calculating Rent. This part describes the statutory formula for calculating Total Tenant Payment (TTP), the use of utility allowances, and the methodology for determining family rent payment. Also included in this section are flat rents and the family's choice in rents.

**PART I: ANNUAL INCOME**

**6-I.A. OVERVIEW [24 CFR Part 5]**

The following is the general regulatory definition of *annual income* according to 24 CFR 5.609: 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 twelve (12) month period following admission or the annual reexamination effective date; and
  - i. Which are not specifically excluded in this chapter.
  - ii. Annual income also means amounts derived (during the twelve (12) month period) from assets to which any member of the family has access.

Sections 6-I.B and 6-I.C in this chapter define the general requirements and methods for calculating annual income. The rest of this section defines 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 definitions 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 defined in Chapter 7-Verification.

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

**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.

Housing Authority Procedure

Generally, an individual who is or is expected to be absent from the assisted unit for one hundred eighty (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 ninety (90) cumulative days is considered permanently absent and no longer a family member. Exceptions to this general Procedure are discussed below.

**Absent Students**

Housing Authority Procedure

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 Housing Authority 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].

Housing Authority Procedure

If a child has been placed in foster care, the Housing Authority 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.

### **Absences Due to Employment**

#### Housing Authority Procedure

An employed head, spouse, co-head, or other adult family member absent from the unit more than ninety (90) cumulative days due to employment will continue to be considered a family member.

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

#### Housing Authority Procedure

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 Housing Authority 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**

#### Housing Authority Procedure

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 fifty-one percent (51%) 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 Housing Authority will make the determination based on available documents such as court orders, or an IRS tax return showing which family has claimed the child for income tax purposes

### **Caretakers for a Child**

#### Housing Authority Procedure

If neither a parent nor a designated guardian remains in a household receiving assistance, the Housing Authority 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 ninety (90) days. After the ninety (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 Housing Authority will extend the caretaker's status as an eligible visitor. (see Chapter 3, Eligibility, Section 3-I.J, Guest, for more information on guests/visitors)

- 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 Housing Authority is required to count all income "anticipated to be received from a source outside the family during the twelve (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 Housing Authority generally will use current circumstances to determine anticipated income for the upcoming twelve (12) month period. HUD authorizes the Housing Authority to use criteria other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected.
- 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 Housing Authority believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)].
- Housing Authorities are required to use HUD's Enterprise Income Verification (EIV) system in its entirety as a third-party source to verify employment and income information, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance [24 CFR 5.233(a)(2)].
- HUD allows the Housing Authority to use paystubs to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where the Housing Authority does not determine it is necessary to obtain additional third-party data.

#### Housing Authority Procedure

When EIV is obtained and the family does not dispute the EIV employer data, the Housing Authority will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, the Housing Authority will make every effort to obtain current and consecutive pay stubs dated within the last sixty (60) days.

The Housing Authority will obtain written and/or oral third-party verification in accordance with the verification requirements and Procedure in Chapter 7 in the following cases:

- If EIV or other Upfront Income Verification (UIV) data is not available,
- If the family disputes the accuracy of the EIV employer data, and/or
- If the Housing Authority determines additional information is needed.

In such cases, the Housing Authority will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the Housing Authority annualized projected income.

When the Housing Authority cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the Housing Authority will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases, the family may present information and documentation to the Housing Authority to show why the historic pattern does not represent the family's anticipated income.

### **Known Changes in Income**

If the Housing Authority verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the twelve (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 Housing Authority 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 Housing Authority 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 Housing Authority's Procedure on reexaminations does not require interim reexaminations for other types of changes.

## **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.

#### Housing Authority Procedure

For persons who regularly receive bonuses or commissions, the Housing Authority will verify and then average amounts received for the two (2) years preceding admission or reexamination. If only a one (1) year history is available, the Housing Authority will use the prior year amounts. In either case, the family may provide, and the Housing Authority 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 Housing Authority will count only the amount estimated by the employer.

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

All regular pay, special pay and allowances of a member of the Armed Forces are counted [24CFR 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.

#### Housing Authority Procedure

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 Chapter 3-Eligibility, for a definition of *foster children*.)

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

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

#### **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 Chapter 3-Eligibility, for a description 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 5.609(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 Housing Authority 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 Housing Authority’s governing board. No resident may receive more than one such stipend during the same period of time.

**State and Local Employment Training Program [24 CFR 5.609(c)(8)(v)]**

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.

Housing Authority Procedure

The Housing Authority 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

The Housing Authority 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.

In calculating the incremental difference, the Housing Authority 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 Housing Authority's interim reporting requirements (see Chapter 9-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.

### Housing Authority Procedure

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 (EID) 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. Eligibility criteria and limitations on the disallowance are summarized below.

### **Earned Income Disallowance Prior to May 9, 2016**

#### **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 (6) 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 (6) 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."

#### Housing Authority Procedure

The Housing Authority defines *prior income*, or *pre-qualifying income*, as the family member's last certified income prior to qualifying for the EID.

The family member's prior, or pre-qualifying, income remains constant throughout the period that EID is received.

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

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

#### Housing Authority Procedure

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 Housing Authority Phase-In**

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

### **Lifetime Limitation [24 CR 960.255(b)(3)]**

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 forty-eight (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 Housing Choice Voucher assistance, or if there are breaks in assistance.

#### Housing Authority Procedure

During the forty-eight (48) month eligibility period, the Housing Authority 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 pre-qualifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

### **Earned Income Disallowance Effective to May 9, 2016**

#### **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 has earned, in the twelve months previous to employment, no more than would be received for 1- hours of work per week for 50 weeks at the established minimum wage.
- Increased earnings by a family member whose earnings increase during participation in an economic self-sufficiency or job-training program.
- New employment or increased earnings by a family member, during or within six (6) 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 Housing Authority 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 received over a six (6) month period is 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 "baseline income."

#### Housing Authority Procedure

The Housing Authority defines *baseline income* as the annual income immediately prior to implementation of the disallowance of a person with disabilities (who is a member of a qualified family),



The family member's prior, or pre-qualifying, income remains constant throughout the period that EID is received.

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

During the twelve (12) month period beginning on the date on which a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the Housing Authority must exclude from the annual income of a qualified family any increase in the income of the family member as a result of employment over the baseline income of that family member.

#### Housing Authority Procedure

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.

### **Phase-In of Rent Increase**

Upon the expiration of the twelve (12) month period defined in the Initial 12-Month Exclusion in and for the subsequent twelve (12) month period, the Housing Authority must exclude from the annual income of a qualified family member at least fifty (50) percent of any increase in income as a result of employment over the family member's baseline income.

### **Maximum Two (2) year Disallowance**

The disallowance of increased income of an individual family member as provided in the initial 12-Month Exclusion or the Phase-In of Rent Increase of is limited to a lifetime 24-month period. It applies for a maximum of 12 months for disallowance under Initial 12-Month Exclusion and a maximum of 12 months for disallowance under the Phase-In Rent Increase, during the 24-month period starting from the initial exclusion under the Initial 12-Month Exclusion.

Effect of changes on currently participating families. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date.

#### Housing Authority Procedure

For families receiving the EID after May 9, 2016, the Housing Authority will conduct an interim reexamination during the twenty-four (24) month eligibility period 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 pre-qualifying income, when one of the exclusion periods ends, and at the end of the maximum two (2) year eligibility period).

### **6-I.F. JOBS PLUS EARNED INCOME DISREGARD (JPEID)**

The Housing Authority will implement the Jobs Plus Earned Income Disregard (JPEID) if the Housing Authority is awarded the grant to implement the Job Plus Pilot Program. The Jobs Plus Pilot Program is a locally-based approach to increase earnings and advance employment outcomes for Public Housing residents. The JPEID is a financial incentive for

participants in the Jobs Plus Pilot Program. Eligibility criteria and limitations on the disallowance are summarized below.

- **Eligibility.** All targeted residents in a Jobs Plus development are eligible to receive the JPEID benefit, but they must sign up for the Jobs Plus program, even if they do not actively participate in other Jobs Plus activities. Residents who previously used up some or all of their lifetime EID eligibility are eligible to receive the full JPEID benefit.
- **Term Length.** The JPEID is in effect for a continuous period of the Jobs Plus grant, beginning when a participant first increases earned income over baseline.
- **Disregarded Amount.** The JPEID excludes 100 percent of incremental earned income for the entire period of the Jobs Plus program.

### **6-I.G. 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.

#### **Business Expenses**

Net income is gross income less business expense.

#### Housing Authority Procedure

To determine business expenses that may be deducted from gross income, the Housing Authority 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 Housing Authority to deduct from gross income expenses for business expansion.

#### Housing Authority Procedure

*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 Housing Authority to deduct from gross income the

amortization of capital indebtedness.

#### Housing Authority Procedure

*Capital indebtedness* is defined as the principle portion of the payment on a capital asset such as land, buildings, and machinery. This means the Housing Authority will allow as a business expense interest, but not principle, 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 Housing Authority 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.

#### Housing Authority Procedure

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 Housing Authority 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**

#### Housing Authority Procedure

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.H. 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 Housing Authority 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 Housing Authority must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section describes:

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

#### **General Policies**

This section begins with a description of general policies related to assets and then provides HUD rules and Housing Authority policies related to each type of asset.

#### **Income from Assets**

The Housing Authority 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 Housing Authority 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 Housing Authority 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 Housing Authority can take into consideration past rental income along with the prospects of obtaining a new tenant.

#### Housing Authority Procedure

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 Housing Authority 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 Housing Authority 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.

#### Housing Authority Procedure

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.

#### **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). (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 Housing Authority 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 Housing Authority 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 Housing Authority 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)(3) specifies that annual income includes "amounts derived (during the twelve (12) month period) from assets to which any member of the family has access."

### Housing Authority Procedure

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the Housing Authority 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 Housing Authority will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the Housing Authority 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 Housing Authority 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 Housing Authority may set a threshold below which assets disposed of for less than fair market value will not be counted.

### Housing Authority Procedure

The Housing Authority 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 (2) 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 reexaminations, the family may request an interim reexamination to eliminate consideration of the asset(s).

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

### **Separation or Divorce**

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

### Housing Authority Procedure

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**

#### Housing Authority Procedure

Families must sign a declaration form at initial examination and each annual reexamination 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 Housing Authority may verify the value of the assets disposed of if other information available to the Housing Authority 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 (0).

#### Housing Authority Procedure

In determining the value of a checking account, the Housing Authority will use the average monthly balance for the last six (6) months.

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

In determining the anticipated income from an interest-bearing checking or savings account, the Housing Authority 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.

#### Housing Authority Procedure

In determining the market value of an investment account, the Housing Authority 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 Housing Authority 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.

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. 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

A family may have real property as an asset in two ways:

1. Owning the property itself; or
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 (0).

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.

#### Housing Authority Procedure

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 Housing Authority 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. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

#### **Non-revocable Trusts**

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

#### **Retirement Accounts**

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

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the Housing Authority must know whether the money is accessible before retirement.

While a family member is employed, only the amount the family member can withdraw



without retiring or terminating employment is counted as an asset.

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, 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.

### **Personal Property**

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset.

#### Housing Authority Procedure

In determining the value of personal property held as an investment, the Housing Authority will use the family's estimate of the value. However, the Housing Authority also may obtain an appraisal if appropriate to confirm the value of the asset. 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 such as furniture or automobiles are not considered assets [24 CFR 5.603(b)].

#### Housing Authority Procedure

Necessary personal property consists of items such as clothing, furniture, automobiles, household furnishings, jewelry that is not held as an investment, and vehicles, including those specially equipped for persons with disabilities.

### **Life Insurance**

The cash value of a life insurance Procedure available to a family member before death, such as a whole life or universal life Procedure, is included in the calculation of the value of the family's assets. The cash value is the surrender value. If such a Procedure 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.1. PERIODIC PAYMENTS [24 CFR 5.609]**

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 [24 CFR 5.609(b)(3) and (b)(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 24 CFR 5.609(c)(14)).

Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum. Periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family.

### **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)].

### Housing Authority Procedure

When a delayed-start payment is received and reported during the period in which the Housing Authority is processing an annual reexamination, the Housing Authority 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 Housing Authority.

See the Chapter 9-Reexaminations, for information about a family's obligation to report lump- sum receipts between annual reexaminations.

**Treatment of Overpayment Deductions from Social Security Benefits [Notice PIH 2012-10]** An overpayment occurs when SSA pays an individual more than s/he should have been paid. If this happens, SSA will notify the individual and his/her designated representative payee, if applicable. Recovery of an overpayment is made by withholding the monthly Social Security check until the overpayment is paid in full (individuals receiving SS benefits), unless the individual requests a lesser withholding amount and SSA approves the request. Full withholding would start thirty (30) days after SSA notification of the overpayment. SSA begins deducting money (for overpayment recovery) from SSI payments at least sixty (60) days after SSA notification of the overpayment. Generally, SSA will withhold ten (10) percent of the maximum federal SSI benefit rate each month. However, an individual may request that less be taken from their benefit, or an individual may ask to pay back the overpayment at a rate greater than ten (10) percent.

Regardless of the amount withheld to repay SSA the overpayment amount, or the length of the anticipated withholding period, the Housing Authority must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount. The Housing Authority should be cognizant of the SSA-determined overpayment amount and length of time the reduced payment will occur, to ensure the family's accurate rent contribution for the duration of reduced income; however, circumstances may arise affecting the end date of the withholding period, causing it to go on longer than anticipated.

### **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)].

### Housing Authority Procedure

The Housing Authority 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.

- 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(c)(14)].

### **6-I.J. 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 f periodic payments in section 6-I.H and the lump-sum receipts in section 6-I.G.)

### **6-I.K. 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 Housing Authority must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. 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 [24 CFR 5.615(B)]**

Covered families 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 Housing Authority must include in annual income “imputed” welfare income. The Housing Authority must request that the welfare agency inform the Housing Authority 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 Housing Authority’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.L. 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 Housing Authority must count alimony or child support amounts awarded as part of a divorce or separation agreement.

### Housing Authority Procedure

The Housing Authority will count court-awarded amounts for alimony and child support

unless the Housing Authority 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.

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 Housing Authority must count as income regular monetary and non-monetary 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)].

### Housing Authority Procedure

Examples of regular contributions include:

1. Regular payment of a family's bills (e.g., utilities, telephone, cell phone, rent, credit cards, cable/satellite, personal hygiene/maintenance; hair, nails, etc., school tuition, pet food/maintenance and car payments and insurance).
2. Cash or other liquid assets provided to any family member on a regular basis.
3. "In-kind" contributions such as groceries and clothing provided to a family on a regular basis.

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

### **6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

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

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)].
- The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)].
- 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)].
- Temporary income payments from the U.S. Census Bureau, defined as employment lasting no longer than 180 days per year and not culminating in permanent employment.
- Amounts specifically excluded by any other federal statute [24 CFR 5.609]. 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. Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
  - d. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
  - e. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
  - f. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, Section 6)
  - g. The first \$2,000 of per capita shares received from judgment funds awarded by the Nation Indian Gaming Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2,000 per year of income received by individual Indians from funds derived from interests held in

such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

- h. Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109-115, section 327) (as amended);
- i. Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));
- j. Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (Pub. L. 101-201) or any other fund established pursuant to the settlement in In Re Agent-Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);
- k. Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1728);
- l. 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);
- m. Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l));
- n. 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);
- o. Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));
- p. Any allowance paid under the provisions of 38 U.S.C. 1833© to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05, children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);
- q. 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);

- r. Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));
- s. Any amount received under the Richard B Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Woman, Infants, and Children (WIC);
- t. Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));
- u. Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum or in prospective monthly amounts (42 U.S.C. 1437a(b)(4)); Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.) and administered by the Office of Native American Programs;
- v. A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v Ken Salazar et al.*, 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.). for a period one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (pub L. 111-291);
- w. Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));
- x. Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a); and
- y. Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).

## **PART II: ADJUSTED INCOME**

### **6-II.A. INTRODUCTION**



## Overview

HUD regulations require Housing Authority's to deduct from annual income any of five (5) 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(a).

Mandatory deductions. In determining adjusted income, the responsible entity 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 (3%) 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

### Housing Authority Procedure

Generally, the Housing Authority will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), the Housing Authority 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 Housing Authority 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 Housing Authority may require the family to provide documentation of payments made in the preceding year.

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

A deduction of \$480 is taken for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or co-head who is under the age of 18 or who is

18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

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

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

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

Un-reimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent (3%) of annual income.

The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 years of age 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.

#### **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."

#### Housing Authority Procedure

The most current IRS Publication 502, *Medical and Dental Expenses*, will be used to determine the costs that qualify as medical expenses. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.

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

#### Housing Authority Procedure

This Procedure applies only to families in which the head, spouse, or co-head is 62 years of age 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 Housing Authority 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)]**

Disability assistance expenses are reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source [24 CFR 5.603(b)].

In determining adjusted income, the Housing Authority must deduct the sum (to the extent the sum exceeds three percent (3%) of annual income) of 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.

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

A family can qualify for the disability assistance expense deduction only if at least one (1) 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.

### **Housing Authority Procedure**

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 Housing Authority 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 Housing Authority 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.

### **Eligible Disability Expenses**

#### **Auxiliary Apparatus**

Examples of auxiliary apparatus provided in HUD's Public Housing Occupancy Guidebook are as follows:

- Wheelchairs
- Walkers
- Motorized 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
- Service animals

The auxiliary apparatus is an eligible disability expense only if these items are directly related to permitting the disabled person or other family member to work. HUD advises Housing Authority's to further define and describe auxiliary apparatus.

### Housing Authority Procedure

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, are included.

### **Attendant Care**

The family determines the type of attendant care that is appropriate for the person with disabilities. Examples of attendant care provided in HUD's Public Housing Occupancy Guidebook are as follows:

- In-home care
- Adult day care
- Nursing
- Housekeeping
- Personal care
- Errand services
- An interpreter for persons who are hearing impaired
- A reader for persons with visual disabilities

### Housing Authority Procedure

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 Housing Authority 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 [24 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.

#### Housing Authority Procedure

The Housing Authority determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the Housing Authority will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the Housing Authority 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**

#### Housing Authority Procedure

This Procedure applies only to families in which the head, spouse, or co-head is 62 years of age 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 Housing Authority 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 [24 CFR 5.603(b)]**

HUD defines *child care expenses* as the amounts anticipated to be paid by the family for the care of children **under thirteen (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 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. 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**

#### Housing Authority Procedure

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 Housing Authority 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**

### Housing Authority Procedure

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 Housing Authority.

## **Furthering Education**

### Housing Authority Procedure

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**

### Housing Authority Procedure

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 (See Chapter 9- Reexaminations).

The Housing Authority 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.

#### Housing Authority Procedure

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 Housing Authority 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 Housing Authority 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.

#### **Allowable Child Care Activities**

##### Housing Authority Procedure

For school-age children (under 13 years of age), 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 Housing Authority 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 years of age 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 education; and

2. The family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

#### Housing Authority Procedure

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 Housing Authority will use the schedule of child care costs from the local welfare agency. Families may present, and the Housing Authority 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 Housing Authority offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions.

The *Form HUD-50058 Instruction Booklet* states that the maximum allowable amount for total permissive deductions is less than \$90,000 per year.

#### Housing Authority Procedure

The Housing Authority 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 either the family or directly to the utility company by the Housing Authority.

#### **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:

1. Thirty percent (30%) of the family's monthly adjusted income;
2. Ten percent (10%) of the family's monthly income;
3. If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated; or
4. The minimum rent as determined in accordance with 24 CFR 5.630.

#### **Welfare Rent [24 CFR 5.628]**



Housing Authority Procedure

Welfare rent does not apply in this locality.

**Minimum Rent [24 CFR 5.630]**

The Housing Authority has the right to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

Housing Authority Procedure

The minimum rent is \$50.

**Optional Changes to Income-Based Rents [24 CFR 960.253(c)(2)]**

The Housing Authority has 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 Housing Authority, 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 Housing Authority's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to Housing Authority 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.

Housing Authority Procedure

The Housing Authority has not adopted optional changes to income-based rents.

**Ceiling Rents [24 CFR 960.253 (2)(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).

Housing Authority Procedure

The Housing Authority does not utilize ceiling rents.

**Utility Reimbursement [24 CFR 960.253(c)(3)]**

The income-based tenant rent must not exceed the total tenant payment (§5.628 of this title) for the family minus any applicable utility allowance for tenant paid utilities. If the

utility allowance exceeds the total tenant payment, the Housing Authority shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the Housing Authority elects to pay the utility supplier, the Housing Authority must notify the family of the amount of the utility reimbursement paid to the supplier.

#### Housing Authority Procedure

The Housing Authority may make utility reimbursements, due to the tenant each month, payable to the gas and electric company.

### **6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630(b)]**

#### **Overview**

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 Housing Authority determines that a hardship exists, the TTP is the highest of the remaining components of the family's calculated TTP.

#### Housing Authority Procedure

The financial hardship rules described below apply because the Housing Authority has established a minimum rent of \$50.

#### **HUD-Defined Financial Hardship**

According to HUD, financial hardship includes the following situations:

1. When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a 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.

#### Housing Authority Procedure

A hardship will be considered to exist only if the loss of eligibility determination for a Federal, State, or local assistance program 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:

- i. Implementation of assistance, if approved; or
- ii. 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 stated below.

2. The family would be evicted because it is unable to pay the minimum rent.

#### Housing Authority Procedure

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.

Housing Authority Procedure

In order to qualify under this provision, the family must provide third-party proof of the decrease of income (see Chapter 9-Reexaminations).

4. A death has occurred in the family.

Housing Authority Procedure

In order to qualify under this provision, the family must provide third-party proof the death occurred and describe in writing 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 Housing Authority.

Housing Authority Procedure

The Housing Authority has not established any additional hardship criteria.

**Implementation of Hardship Exemption  
Determination of Hardship**

When a family requests a financial hardship exemption, the Housing Authority must suspend the minimum rent requirement beginning the first of the month following the family's request.

The Housing Authority then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

Housing Authority Procedure

The Housing Authority defines temporary hardship as a hardship expected to last ninety (90) days or less. Long term hardship is defined as a hardship expected to last more than ninety (90) days.

The Housing Authority may not evict the family for nonpayment of minimum rent during the ninety (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 Housing Authority has established a minimum rent of \$50.	
<b>TTP – No Hardship</b>	<b>TTP – With Hardship</b>

\$0	30% of monthly adjusted income	\$0	30% of monthly adjusted income
\$35	10% of monthly gross income N/A Welfare rent	\$35	10% of monthly gross income N/A Welfare rent
Minimum rent applies. TTP = \$50		Hardship exemption granted. TTP = \$35	

Housing Authority Procedure

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 Housing Authority will make the determination of hardship within thirty (30) calendar days.

**No Financial Hardship**

If the Housing Authority determines there is no financial hardship, the Housing Authority will reinstate the minimum rent and require the family to repay the amounts back-owed from the beginning of the suspension. For procedures pertaining to grievance hearing requests based upon the Housing Authority’s denial of a hardship exemption, see Chapter 14-Grievances and Appeals.

Housing Authority Procedure

The Housing Authority will require the family to repay the suspended amount within thirty (30) calendar days of the Housing Authority’s notice that a hardship exemption has not been granted.

**Temporary Hardship**

If the Housing Authority determines that a qualifying financial hardship is temporary, the Housing Authority 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 Housing Authority the amounts suspended. HUD requires the Housing Authority to offer a reasonable repayment agreement, on terms and conditions established by the Housing Authority. The Housing Authority 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 Housing Authority’s denial of a hardship exemption, see Chapter 14-Grievances and Appeals.

Housing Authority Procedure

The Housing Authority will enter into a repayment agreement in accordance with the Housing Authority's repayment agreement Procedure (see Chapter 16-Program Administration).

**Long-Term Hardship**

If the Housing Authority determines that the financial hardship is long-term, the Housing Authority 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.

#### Housing Authority Procedure

The hardship exemption 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 Housing Authority 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-Program Administration.

#### **Reasonable Accommodation [24 CFR 8.11]**

On request from a family, Housing Authority 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.

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. See Chapter 2-Fair Housing and Equal Opportunity for policies related to reasonable accommodations.

#### **Utility Allowance Review and Revisions [24 CFR 965.507] Utility Allowance**

##### **Review**

The Housing Authority shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in 24 CFR 965.505, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the Housing Authority) indicating

probability of a significant change in reasonable consumption requirements and changes in utility rates.

### **Revision as a Result of Rate Changes**

The Housing Authority may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of ten (10) percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall 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. Such rate changes shall not be subject to the sixty (60) day notice requirement of 24 CFR 965.502(c).

The tenant rent calculations must reflect any changes in the Housing Authority's utility allowance schedule [24 CFR 960.253(c)(3)].

### Housing Authority Procedure

Unless the Housing Authority 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 (d)]**

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 Housing Authority must prorate the assistance provided to a mixed family. The Housing Authority 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. The Housing Authority must prorate the family's assistance by:

- *Step 1.* Determining total tenant payment in accordance with 24 CFR 913.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)
- *Step 2.* Subtract the total tenant payment from the PHA established flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy"). When the mixed family TTP is greater than the flat rent, the Housing Authority must use the TTP as the mixed family TTP.
- *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".
- *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

The product of steps 1 through 4, as set forth in paragraph (d)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "the Housing Authority established flat rent minus the amount of eligible subsidy.

#### **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 Authority 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- Reexaminations, and policies related to the establishment and review of flat rents are contained in Chapter 16-Program Administration.

#### **Family Choice in Rents [24 CFR 960.253] Annual Choice by Family**

Once a year, the Authority must give each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. The family may choose to pay as tenant rent either a flat rent or an income-based rent as indicated below:

#### **Flat Rent**

The Authority will review flat rents as needed to ensure that flat rents continue to mirror market rent values.

- The Housing Authority will set the flat rents at no less than eight percent (80%) of the published Fair Market Rent.
- The Authority must use a reasonable method to determine the flat rent for a unit.

To determine the flat rent, the Housing Authority must consider:

- The location, quality, size, unit type and age of the unit; and
- Any amenities, housing services, maintenance and utilities provided by the Authority.
- 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.
- If the family chooses to pay a flat rent, the Authority does not pay any utility reimbursement.
- The Authority must maintain records that document the method used to determine

flat rents, and also show how flat rents are determined by the Authority in accordance with this method, and document flat rents offered to families.

### **Income-based Rent.**

- An income-based rent is a tenant rent that is based on the family's income and the Authority's policies for determination of such rents.
- The Authority rent policies may specify that the Authority will use percentage of family income or some other reasonable system to determine income-based rents. The Authority rent policies may provide for depositing a portion of tenant rent in an escrow or savings account, for imposing a ceiling on tenant rents, for adoption of permissive income deductions [see 24 CFR 5.611(b)], or for another reasonable system to determining the amount of income-based tenant rent.
- The income-based tenant rent must not exceed the total tenant payment [24 CFR 5.628] for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the Housing Authority shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the Housing Authority elects to pay the utility supplier, the Housing Authority must notify the family of the amount of utility reimbursement paid to the utility supplier.

### Housing Authority Procedure

The Housing Authority will make utility reimbursements to the gas and electric company.

Regardless of whether the family chooses to pay a flat rent or income-based rent, the must pay at least the minimum rent as determined in accordance with 24 CFR 5.630.

### Housing Authority Procedure

The annual Housing Authority 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 Housing Authority 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.

### **Information for Families**

For the family to make an informed choice about its rent options, the Housing Authority must provide sufficient information for an informed choice. Such information must include at least the following written information:

- The Housing Authority's policies on switching type of rent in circumstances of financial hardship, and
- The dollar amounts of tenant rent for the family under each option. If the family chose a flat rent for the previous year, the Housing Authority is required to provide the amount of income-based rent for the subsequent year only the year the Housing



Authority conducts an income reexamination or if the family specifically requests it and submits updated income information. For a family that chooses the flat rent option, the Housing Authority must conduct a reexamination of family income at least once every three (3) years.

### **Switching from Flat Rent to Income-Based Rent Due to Hardship [24 CFR 960.253(f)]**

A family that is paying a flat rent may at any time request a switch to payment of income-based rent (before the next annual option to select the type of rent) if the family is unable to pay flat rent because of financial hardship. The Housing Authority must adopt written policies for determining when payment of flat rent is a financial hardship for the family.

#### Housing Authority Procedure

Upon determination by the Housing Authority that a financial hardship exists, the Housing Authority will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request.

If the Housing Authority determines that the family is unable to pay the flat rent because of financial hardship, the Housing Authority must immediately allow the requested switch to income-based rent. The Housing Authority shall make the determination within a reasonable time after the family request.

The Housing Authority policies for determining when payment of flat rent is a financial hardship must provide that financial hardship include the following situations:

- 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; and
- Such other situations determined by the Housing Authority to be appropriate.

#### Housing Authority Procedure

The Housing Authority considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent.

### **Change in Flat Rents**

#### Housing Authority Procedure

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.

### **Flat Rents and Earned Income Disallowance**

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 forty-eight (48) month period would have the twelve (12) cumulative months of full (100 percent) and Housing Authority Phase-in (fifty (50%) percent) exclusion continue while paying flat rent as long as the employment that is the subject of the exclusion continues, and the forty-eight (48) month lifetime limit would continue uninterrupted. A family paying flat rent could therefore see a family member's forty-eight (48) month lifetime limit expire while the family is paying flat rent.

**Chapter 7**  
**VERIFICATION**  
[24 CFR 960.259, 24 CFR 5.230]

**INTRODUCTION**

The Housing Authority 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 Housing Authority must not pass on the cost of verification to the family.

The Housing Authority will follow the verification guidance provided by HUD. This chapter summarizes those requirements and provides supplementary Housing Authority policies. 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 Housing Authority.

Part I: General Verification Process. This part contains general verifications requirements.

Part II: Family Verification. This part includes more detailed requirements related to individual factors are provided in subsequent parts including family information.

Part III: Income and Assets. This part contains policies for income and assets verification.

Part IV: Mandatory Deductions. This part contains policies for mandatory deductions.

**PART I: GENERAL VERIFICATION REQUIREMENTS**

**7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 960.259, 24 CFR 5.230]**

**Family Obligation to Supply Information [24 CFR 960.259]**

The family must supply any information that the Housing Authority or HUD determines is necessary in administration of the public housing program, including submission of required evidence of citizenship or eligible immigration status. "Information" includes any requested certification, release or other documentation.

The family must supply any information requested by the Housing Authority or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements.

**Consent by Applicants and Participants [24 CFR 5.230] Required consent by Applicants and Participants**

Each member of the family of an assistance applicant or participant who is at least eighteen years of age, and each family head and spouse regardless of age, shall sign one or more consent forms.

**Consent Authorization**

The assistance applicant shall submit the signed consent forms to the Housing Authority

when eligibility under a covered program is being determined. A participant shall sign and submit consent forms at the next regularly scheduled income reexamination. Assistance applicants and participants shall be responsible for the signing and submitting of consent forms by each applicable family member.

Participants are required to sign and submit consent forms at the next interim or regularly scheduled income reexamination under the following circumstances:

- i. When any person 18 years or older becomes a member of the family;
- ii. (ii) When a member of the family turns 18 years of age; and
- iii. As required by HUD or the Housing Authority in administrative instructions.

### **Consent Forms [24 CFR 5.230 (c)]**

According to HUD, the consent forms required shall contain, at a minimum, the following:

1. A provision authorizing HUD and Housing Authority's to obtain from State Wage Information Collection Agencies (SWICAs) any information or materials necessary to complete or verify the application for participation and to maintain continued assistance under a covered program;
2. A provision authorizing HUD, Housing Authority's, or the owner responsible for determining eligibility for or the level of assistance to verify with previous or current employers income information pertinent to the assistance applicant's or participant's eligibility for or level of assistance under a covered program;
3. A provision authorizing HUD to request income return information from the IRS and the SSA for the sole purpose of verifying income information pertinent to the assistance applicant's or participant's eligibility or level of benefits; and
4. A statement that the authorization to release the information requested by the consent form expires fifteen (15) months after the date the consent form is signed.

All adult applicants and tenants must 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 Housing Authority may collect information from State Wage Information Collection Agencies (SWICA) 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. The head of household is also required to sign the Supplemental Information to Applicants for Assistance Form.

### **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 Housing Authority will deny admission to applicants and terminate the lease of tenants. The family

may request a hearing in accordance with the Housing Authority’s grievance procedures (see Chapter 14-Grievances and Appeals).

**7-I.B. METHODS OF VERIFICATION AND TIME ALLOWED [24 CFR 982.516] [PIH 2010-19 (HA)]**

The Housing Authority will verify information through the following methods of verification acceptable to HUD in the following order:

**HUD’s Verification Hierarchy [Notice PIH 2010-19 (HA), as extended by Notice PIH 2015-02, 2017-12]**

Housing Authorities should begin with the highest level of verification techniques.

Housing Authorities are required to access the EIV system and obtain an Income Report for each household. The Housing Authority is required to maintain the Income Report in the tenant file along with the form HUD-50058 and other supporting documentation to support income and rent determinations for all mandatory annual reexaminations of family income and composition. If the Income Report does not contain any employment and income information for the family, the Housing Authority should attempt the next lower level verification technique, as noted in the below chart.

Level	Verification Technique	Ranking
6	<b>Upfront Income Verification (UIV)</b> using HUD’s Enterprise Income Verification (EIV) system (not available for income verifications of applicants)	<b>Highest</b> (Mandatory)
5	<b>Upfront Income Verification (UIV)</b> using non-HUD system	<b>Highest</b> (Optional)
4	<b>Written third Party Verification</b>	<b>High</b> (Mandatory to supplement EIV-reported income sources and when EIV has no data; Mandatory for non-EIV reported income sources; Mandatory when tenant disputes EIV reported employment and income information <b>and</b> is unable to provide acceptable documentation to support dispute)
3	<b>Written Third Party Verification Form</b>	<b>Medium-Low</b> (Mandatory if written third party verification documents are not available or rejected by the Housing Authority; and when the applicant or tenant is unable to provide acceptable documentation)
2	<b>Oral Third Party Verification</b>	<b>Low</b> (Mandatory if written third party verification is not available)
1	<b>Tenant Declaration</b>	<b>Low</b> (Use as a last resort when unable to obtain any type of third party verification)

**Note:** This verification hierarchy applies to income determinations for applicants and participants. However, EIV is not available for verifying income of applicants.

**Enterprise Income Verification (EIV)**

The Housing Authority utilizes HUD's Enterprise Income Verification (EIV) system as an on-line source for income verification before or during a reexamination, through an independent source that systematically and uniformly maintains income information in a computerized format for a large number of individuals. This system enables the Housing Authority to check a variety of income sources for all family members, regardless of income sources reported by applicants and participants.

The Housing Authority staff may not disclose EIV data to any third parties (EIV data is property of HUD and protected by the Federal Privacy Act). Staff may only provide EIV data to the individual to whom the record pertains. EIV data of minors may be provided to the minor's parent or guardian.

### **Third-Party Verification Techniques**

#### **Upfront Income Verification (UIV) (Level 6/5)**

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 number of individuals. The EIV system is available to all Housing Authority's as a UIV technique. Housing Authorities are encouraged to continue using other non-HUD UIV tools, such as The Work Number (an automated verification system) and state government databases, to validate tenant-reported income.

#### **Written Third Party Verification (Level 4)**

An original or authentic document generated by a third-party source dated either within the sixty (60) day period preceding the reexamination or Housing Authority request date. Such documentation may be in the possession of the tenant (or applicant) and is commonly referred to as tenant-provided documents.

Examples of acceptable tenant-provided documentation (generated by a third-party source)

include, but are not limited to:

- a. Paystubs or payroll summary report
- b. Employer notice/letter of hire/termination
- c. SSA benefit verification letter
- d. Bank statements
- e. Child support payment stubs
- f. Welfare benefit letters and/or printouts
- g. Unemployment monetary benefit notices
- h. Pharmacy printouts

The Housing Authority is required to obtain at a minimum, two (2) current and consecutive pay stubs for determining annual income from wages. The Housing Authority will continue to request six (6) current and cumulative paycheck stubs. For new income sources or when two (2) pay stubs are not available, the Housing Authority should project income based on the information from a traditional written third party verification form or the best available information.

**Note:** Documents older than sixty (60) days (from the Housing Authority interview/determination or request date) **are** acceptable for confirming dates of income.

The Housing Authority may, at its discretion, reject any tenant-provided documents and follow up directly with the source to obtain necessary verification of information.

If SSA/SSI benefit information cannot be obtained through EIV and the participant and/or household member are unable to provide the requested document(s), ask the participant/household member to utilize the following option:

- Ask the participant to request a *Proof of Income Letter* from SSA's toll-free number at 1-800-772-1213; **or**
- While meeting with the applicant, help the applicant ask the resident to request a benefit verification letter from SSA's website at [www.socialsecurity.gov](http://www.socialsecurity.gov). This service is free and SSA will send the letter to the applicant within ten (10) days. To access the site for requesting benefit verification letters, go to the Social Security Online front page and select What You Can do Online and follow the instructions for requesting a *Proof of Income Letter*. Assist the applicant in answering questions and explain how the applicant should provide the letter once they receive it. Upon receipt, the applicant/household member should provide the Housing Authority with the original SSA benefit letter. The Housing Authority should make a photocopy of the document for the Housing Authority file and return the original document to the individual. The Housing Authority should use the listed gross benefit amount to calculate annual income from social security benefits. SSA encourages recipients to use the SSA's website rather than the toll-free number to request *Proof of Income Letters*

The SSA will charge the Housing Authority a fee for third party verifications of social security benefits. Therefore, to avoid incurring third party verification costs, the Housing Authority will use the method noted above to obtain verification for each household member that receives social security benefits

### **Written Third Party Verification Form (Level 3)**

Traditional written third-party verification is used to verify information directly from the source. Third party written verification forms will be sent directly to the third-party source by mail, electronic mail or fax. The form is completed by the third party by hand (in writing or typeset). The family will be required to sign an authorization for the information source to release the specified information.

### **Oral Third-Party Verification (Level 2)**

Oral third-party verification will be used when written third party verification is not possible, or in the event that the independent source does not respond to Agency request in a reasonable time frame, i.e. ten (10) business days. When this method is used, staff will be required to document in the file, the name of the person contacted and telephone number, the date and time of the conversation, and the facts provided. The following time line should be followed:

- If the attempt at the written third-party verification failed, you need to call to the employer/agency and document information obtained on the "Third Party Oral Verification Form".

- If oral third party is not available, the Housing Authority will document the attempts and move on to the next method of verification, "non-third-party verification". The Housing Authority will accept faxed documents and will accept photo copies provided the information is confirmed over the phone.

## **Non-Third-Party Verification Technique**

### **Tenant Declaration (Level 1)**

The tenant submits an affidavit or notarized statement of reported income and/or expenses to the Housing Authority. This verification method should be used as a last resort when the Housing Authority has not been successful in obtaining information via all other verification techniques. When the Housing Authority relies on the tenant declaration, the Housing Authority must document on the Method of Verification (MOV) Form the reason(s) why third-party verification was not available.

**Third party verification requirements.** In accordance with 24 CFR 960.259(c)(1) and 24 CFR 982.516(a)(2), the Agency must obtain and document in the tenant file third party verification of the following factors, or must document in the tenant file why third party verification was not available: (i) reported family annual income; (ii) the value of assets; (iii) expenses related to deductions from annual income; and (iv) other factors that affect the determination of adjusted income.

### **Exceptions to Third Party Verification Requirements**

HUD is aware that in some situations, third party verification is not available for a variety of reasons. In these cases, the Housing Authority is required to document the reason(s) why third-party verification was not available.

The Housing Authority **must** request written third-party verification under the following circumstances:

1. When the tenant disputes the EIV information and is unable to provide acceptable documentation support his/her dispute (24 CFR 5.236(b));
2. When the Housing Authority requires additional information that is not available in EIV and/or the tenant is unable to provide the Housing Authority with current acceptable tenant-provided documentation. Examples of additional information, includes but is not limited to:
  - i. Effective dates of income (i.e. employment, unemployment compensation, or social security benefits)
  - ii. For new employment: pay rate, number of hours worked per week, pay frequency, etc.
  - iii. Confirmation of change in circumstances (i.e. reduced hours, reduced rate of pay, temporary leave of absence, etc.).

**If the EIV report reveals an income source that was not reported by the tenant or a substantial difference in the reported income information, the Agency is required to take the following actions:**



1. Discuss the income discrepancy with the tenant; and
2. Request the tenant to provide any documentation to confirm or dispute the unreported or underreported income and/ or income sources; and
3. In the event the tenant is unable to provide acceptable documentation to resolve the income discrepancy, the Agency is required to request from the third-party source, any information necessary to resolve the income discrepancy; and
4. If applicable, determine the tenant's underpayment of rent as a result of unreported or underreported income, retroactively\*; and
5. Take any other appropriate action as directed by HUD or the Agency administrative policies.

\*The Agency is required to determine the retroactive rent as far back as the existence of complete file documentation (form HUD-50058 and supporting documentation) to support such retroactive rent determinations.

**Note:** A substantial difference is defined as an amount equal to or greater than \$2,400 annually.

The tenant must be provided an opportunity to contest the Agency's determination of tenant rent underpayment.

## PART II: VERIFYING FAMILY INFORMATION

### 7-II.A. VERIFICATION OF LEGAL IDENTITY

#### Housing Authority Procedure

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

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers <input type="checkbox"/> Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicle identification card <input type="checkbox"/> U.S. military discharge (DD 214) <input type="checkbox"/> U.S. passport <input type="checkbox"/> Employer identification card	<input type="checkbox"/> Certificate of birth <input type="checkbox"/> Adoption papers <input type="checkbox"/> Custody agreement <input type="checkbox"/> Health and Human Services ID <input type="checkbox"/> School records

If a document submitted by a family is illegible or otherwise questionable, more than one of the documents listed above may be required.

If none of these documents can be provided and at the Housing Authority'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 Housing Authority and be signed in the presence of a Housing Authority representative or Housing Authority notary public. Legal identity will be verified on an as needed basis.

### 7-II.B. DISCLOSURE OF SOCIAL SECURITY NUMBERS [PIH Notice 2010-3 (HA)]

Families are required to provide verification of Social Security Numbers (SSN) for all family members prior to admission. If the Housing Authority determines that the assistance

applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the following documentation to verify the SSN of each member of the household.

- A valid SSN card issued by the SSA;
- An original document issued by a federal or state government agency, which contains the name of the individual and the SSN of the individual, along with other identifying information of the individual; or
- Such other evidence of the SSN as HUD may prescribe in administrative instructions.

If a child under the age of 6 years was added to the assistance applicant household within the 6- month period prior to the household's date of admission the assistance applicant may become a participant, so long as the documentation referenced in the bullets above is provided to the

Housing Authority within 90 calendar days from the date of admission into the program. The Housing Authority must grant an extension of one additional 90-day period if the Housing Authority determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation referenced in the bullets above within the required time period, the processing entity must follow the provisions of 24 CFR 5.218.

This requirement also applies to persons joining the family after admission to the program. Failure to furnish verification of Social Security Numbers is grounds for denial or termination of assistance.

#### Disclosure Requirements

Disclosure of Social Security Numbers is required. The requirements of this section apply to applicants and participants. Each applicant and participant must submit complete and accurate Social Security Numbers assigned to the applicant and to each member of the applicant's household.

Each person, except those 62 years of age or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, must submit a valid SSN if the participant has:

- Not previously disclosed a SSN;
- Previously disclosed a SSN that HUD or the SSA determined was invalid; or
- Been issued a new SSN

Once an applicant has provided Social Security Numbers for the household and the Housing Authority has verified each SSN, the following rules apply:

*Addition of new household member who is at least six (6) years of age or under the age of six (6) and has an assigned SSN.* When the participant requests to add a new household member who is at least six (6) years of age, or is under the age of six (6) and has an assigned SSN, the participant must provide the following to the Housing Authority at the

time of the request, or at the time of processing the interim reexamination or reexamination of family composition that includes the new member(s):

- An original SSN card issued by SSA;
- An original SSA-issued document, which contains the name and SSN of the individual; or
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

*Addition of new household member who is under the age of six (6) and has no assigned SSN.* When a participant requests to add a new household member who is under the age of six (6) and has not been assigned a SSN, the participant shall be required to provide the complete and accurate SSN assigned to each new child within ninety (90) calendar days of the child being added.

The Housing Authority shall grant an extension of one (1) additional ninety (90) day period if the processing entity, in its discretion, determines that the participant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant.

When determining eligibility, each applicant must submit the information to the Housing Authority. If applicant does not provide requested SSN and Housing Authority determines that the applicant is otherwise eligible to participate in a program, the applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the complete and accurate SSN assigned to each member of the household except for children under the age of 6 who were added to the household within the last six (6) months (same rules apply with regard to extensions granted to obtain SSN).

The mandatory social security number requirements does not apply to individuals in mixed families, who do not contend eligible immigration status under HUD's non-citizens regulation nor does it interfere with existing requirements relative to pro-ration of assistance or screening for such families.

The social security numbers of household members, such as live-in aides, must be verified for the purpose of conducting criminal background checks.

### **Verification of Lifetime Sex Offender Registration**

For any admissions after June 25, 2001 (the effective date of the Screening and Eviction for Drug Abuse and other Criminal Activity final rule Federal Register May 24, 2001), if the reexamination screening reveals that the tenant or a member of the tenant's household is subject to a lifetime sex offender registration requirement, or that the tenant has falsified information or otherwise failed to disclose his or her criminal history on their application and/or reexamination forms, the Housing Authority will propose termination of tenancy. The Housing Authority will use the following process at initial eligibility and at each reexamination determination:

- Ask households whether any member is subject to a lifetime registration requirement under a state sex offender registration program.

- Use the Dru Sjodin National Sex Offender website at [www.nsopw.gov](http://www.nsopw.gov) to confirm that applicants and federal housing assistance recipients are not lifetime registered sex offenders.

Aggressively pursue termination of tenancy or assistance, as appropriate, for tenants subject to a State lifetime sex offender registration requirement to the extent currently allowed by law.

### **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. Age must be verified only once during continuously-assisted occupancy.

#### Housing Authority Procedure

If an official record of birth or evidence of social security retirement benefits cannot be provided, the Housing Authority 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.

### **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 Chapter 3-Eligibility.

#### Housing Authority Procedure

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**

#### Housing Authority Procedure

- Certification by the head of household is normally sufficient verification. If the Housing Authority has reasonable doubts about a marital relationship, the Housing Authority 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**

#### Housing Authority Procedure

- Certification by the head of household is normally sufficient verification. If the Housing Authority has reasonable doubts about a separation or divorce, the Housing

Authority 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**

#### Housing Authority Procedure

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**

#### Housing Authority Procedure

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**

#### Housing Authority Procedure

The Housing Authority requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family claims full-time student status for an adult other than the head, spouse, or co-head; or
- The family claims a child care deduction to enable a family member to further his or her education.

### **7-II.F. DOCUMENTATION OF DISABILITY**

The Housing Authority must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The Housing Authority is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The Housing Authority may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the Housing Authority receives a verification document that provides such information, the Housing Authority will not place this information in the tenant file. Under no circumstances will the Housing Authority request a resident's medical record(s).

### **Family Members Receiving Social Security Administration (SSA) Disability Benefits** Verification of receipt of disability benefits from the SSA is sufficient for

verification of disability for the purpose of certain income disallowances and deductions

#### Housing Authority Procedure

For family members claiming disability who receive disability payments from the SSA, the Housing Authority will attempt to obtain information about disability benefits through HUD's Enterprise Income Verification (EIV) system. If documentation is not available through HUD's EIV system, the Housing Authority will request a current (dated within the last sixty (60) days) SSA benefit verification letter from each family member claiming disability status. If a family member is unable to provide the document, the Housing Authority will ask the family to obtain a benefit verification letter either by calling SSA at 1-800-772-1213 or by requesting one from [www.ssa.gov](http://www.ssa.gov). Once the family receives the benefit verification letter, they will be required to provide the letter to the Housing Authority.

#### **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 is not sufficient verification that the individual meets HUD's definition of disability in order to be eligible for certain income disallowances and deductions.

#### Housing Authority Procedure

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 Chapter 3-Eligibility.

### **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 Chapter 3-Eligibility for detailed discussion of eligibility requirements. This chapter discusses HUD and Housing Authority 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 years of age or older and by a guardian for minors. The Housing Authority may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

#### Housing Authority Procedure

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the Housing Authority receives information indicating that

an individual's declaration may not be accurate.

**Verification of Citizenship/Eligible Immigrant Status [24 CFR 5.508, 5.510, 5.512, 5.514]** To be eligible for assistance, individuals must be U.S. citizens or eligible immigrants. Individuals who are neither may elect not to contend their status. Eligible immigrants must fall into one of the categories specified by the regulations and must have their status verified by the U.S. Citizenship and Immigration Services (USCIS). Each family member must declare their status once.

Assistance cannot be delayed, denied, or terminated while verification of status is pending except that assistance to applicants may be delayed while the Housing Authority hearing is pending.

Citizens or Nationals of the United States are required to sign a declaration under penalty of perjury. The Housing Authority will require citizens to provide documentation of citizenship. Acceptable documentation will include at least one of the following original documents:

- United States Birth Certificate
- United States Passport
- Resident alien/registration card
- Social Security card
- Other appropriate documentation as determined by the Housing Authority (See Section 7-II.A, Verification of Legal Identity, for more information)

Eligible immigrants, who are 62 years of age or over, are required to sign a declaration of eligible immigration status and provide proof of age.

Non-citizens with eligible immigration status must sign a declaration of status and verification consent form and provide their original immigration documents, which are copied front and back and returned to the family. The Housing Authority verifies the status through the U.S.

Citizenship and Immigration Services. If this primary verification fails to verify status, the Housing Authority must request within ten (10) days that the USCIS conduct a manual search.

Ineligible family members who do not claim to be citizens or eligible immigrants must be listed on a statement of ineligible family members signed by the head of household or spouse.

Non-citizen students on a student visa are ineligible members even though they are in the country lawfully. They must provide their student visa but their status will not be verified and they do not sign a declaration but are listed on the statement of ineligible members.

### **Failure to Provide Required Information**

If an applicant or participant family member fails to sign required declarations and consent forms or provide documents, as required, they must be listed as an ineligible member. If the entire family fails to provide and sign as required, the family may be denied or terminated for failure to provide required information.

### **Time of Verification**

For applicants, verification of U.S. citizenship/eligible immigrant status occurs at the same time as verification of other factors of eligibility for final eligibility determination.

The Housing Authority will not provide assistance to any family prior to the affirmative establishment and verification of the eligibility of the individual or at least one member of the family.

For family members added after other members have been verified, the verification occurs at the same time the member is added to the household or at the first reexamination after the new member moves in.

### **Extensions of Time to Provide Documents**

The Housing Authority will grant an extension of thirty (30) days for families to submit evidence of eligible immigrant status.

### **Acceptable Documents of Eligible Immigration**

The regulations stipulate that only the following documents are acceptable unless changes are published in the Federal Register.

- Alien Registration Receipt Card (I-551)
- Arrival-Departure Record (I-94)
- Temporary Resident Card (I-688)
- Employment Authorization Card (I-688 A or B)
- Receipt issued by the U.S. Citizenship and Immigration Services for issuance of replacement of any of the above documents that shows individual's entitlement has been verified.

A birth certificate is not acceptable verification of status. All documents in connection with U.S. citizenship/eligible immigrant status must be kept five years.



If the Housing Authority determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside permanently in the family's unit, the family's assistance will be terminated for twenty-four (24) months, unless the ineligible individual has already been considered in prorating the family's assistance.

### **Housing Authority Verification**

For family members 62 years of age or older who claim to be eligible immigrants, proof of age is required in the manner described in this chapter. No further verification of eligible immigration status is required.

For family members under the age of 62 years of age who claim to be eligible immigrants, the Housing Authority must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS). The Housing Authority will follow all USCIS protocols for verification of eligible immigration status.

### **Systematic Alien Verification for Entitlements (SAVE) When Verification Is To Occur [24 CFR 5.512.]**

Verification of eligible immigration status shall be conducted by the Housing Authority simultaneously with verification of other aspects of eligibility for assistance under a 214 covered program. The Housing Authority shall verify eligible immigration status in accordance with USCIS procedures:

#### **Primary Verification**

##### Automated verification system

Primary verification of the immigration status of the person is conducted by the Housing Authority through the USCIS automated system, SAVE. The SAVE system provides the following information:

- Alien Registration Number
- Verification Number
- First Name
- Last Name
- Immigration Status messages

*Failure of primary verification to confirm eligible immigration status.*

If the USCIS primary verification response is "Institute Secondary Verification," secondary verification must be performed.

#### **Secondary Verification**

##### Manual search of USCIS records

Secondary verification is a manual search by the USCIS of its records in an attempt to determine an individual's immigration status. The Housing Authority must request secondary verification, within ten (10) days of receiving the results of the primary verification.

*Secondary verification initiated by Housing Authority.*

Secondary verification is initiated by the Housing Authority forwarding photocopies (front and back) of the original USCIS documents attached to the USCIS form G-845S (Document Verification Request) to a designated USCIS office.

*Failure of secondary verification to confirm eligible immigration status.*

If the secondary verification does not confirm eligible immigration status, the Housing Authority shall issue the family a notice, which includes notification of appeal to the USCIS of the USCIS finding on immigration status (see Chapter 3-Eligibility, 3-11.B., Citizenship or Eligible Immigration Status).

Exemption from Liability for USCIS Verification. The Housing Authority shall not be liable for any action, delay, or failure of the USCIS in conducting the automated or manual verification.

#### **7-II.H. VERIFICATION OF PREFERENCE STATUS**

The Housing Authority must verify any local preferences (see Chapter 4- Applications, Waiting List and Tenant Selection) claimed by an applicant.

### **PART III: VERIFYING INCOME AND ASSETS**

Any assets and income reported by the family must be verified. Chapter 6-Rent and Income Determinations, 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. This part provides Housing Authority policies that supplement the general verification procedures specified in Part I of this chapter.

#### **7-III.A. EARNED INCOME**

##### **Tips**

##### Housing Authority Procedure

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**

##### Housing Authority Procedure

- Business owners and self-employed persons will be required to provide:
  - Audited financial statements 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 Housing Authority 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 annual or interim reexamination, the Housing Authority 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 Housing Authority may 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 Housing Authority 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 SSA/SSI Benefits**

#### Housing Authority Procedure

1. To verify the SSA/SSI benefits of applicants, the Housing Authority will request a current (dated within the last sixty (60) days) SSA benefit verification letter from each family member who receives social security benefits.
  - a. If a family member is unable to provide the document, the Housing Authority will ask the family to obtain a benefit verification letter either by calling SSA at 1-800-772-1213 or by requesting one from [www.ssa.gov](http://www.ssa.gov). Once the family has received the original benefit verification letter, they will be required to provide the letter to the Housing Authority.
2. To verify the SSA/SSI benefits of participants, the Housing Authority will obtain information about SSA/SSI benefits through HUD's EIV system.
  - a. If benefit information is not available in the EIV system, the Housing Authority will request a current (dated within the last sixty (60) days) SSA benefit verification letter from each family member who receives social security benefits.
  - b. If a family member is unable to provide the document, the Housing Authority will ask the family to obtain a benefit verification letter either by calling SSA at 1-800-772-1213 or by requesting one from [www.ssa.gov](http://www.ssa.gov). Once the family has received the benefit verification letter, they will be required to provide the letter to the Housing Authority.

### **7-III.D. ALIMONY OR CHILD SUPPORT**

#### Housing Authority Procedure

The way the Housing Authority 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:

1. If payments are made through a state or local entity, the Housing Authority will request a record of payments for the past twelve (12) months and request that the entity disclose any known information about the likelihood of future payments.
2. Third-party verification from the person paying the support.
3. Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.
4. Copy of the latest check and/or payment stubs.
5. 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 (2) years. The Housing Authority needs to verify only those certifications that warrant documentation.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and the Housing Authority verified this amount. Now the person reports that she has given this \$10,000 to her son. The Housing Authority has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the Housing Authority will verify the value of this asset.

#### Housing Authority Procedure

The Housing Authority will verify the value of assets disposed of only if:

- The Housing Authority 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.

### **7-III.F. NET INCOME FROM RENTAL PROPERTY**

#### Housing Authority Procedure

The family must provide the following documentation regarding net income from a rental property:

- 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 Housing Authority 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**

#### Housing Authority Procedure

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 Housing Authority may 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 six (6) months from the effective date of the examination.
- *Upon* retirement, the Housing Authority 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 Housing Authority will accept an original document from the entity holding the account dated no earlier than twelve (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 description of excluded income is provided in Chapter 6-Income and Rent Determinations, Part I, Annual Income.

The Housing Authority must obtain verification for income exclusions only if, without verification, the Housing Authority 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 Housing

Authority will confirm that Housing Authority records verify the child's age but will not send a verification request to the restaurant.

#### Housing Authority Procedure

The Housing Authority 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). However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified. In all other cases, the Housing Authority will report the amount to be excluded as indicated on documents provided by the family.

### **7-III.I. ZERO ANNUAL INCOME STATUS**

#### Housing Authority Procedure

Families claiming to have no annual income will be required to execute verification forms to determine that certain forms of income such as unemployment benefits, Temporary Assistance for Needy Families (TANF), SSI, etc. are not being received by the household. The family may be required to complete a Monthly Expenditure Form. The Housing Authority may request information from the State Employment Development Department and the IRS. The Housing Authority may run a credit report if information is received that indicates the family has an unreported income source. Special reexaminations will occur every ninety (90) days.

## **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 Housing Authority verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

#### **Dependent Deduction**

The Housing Authority will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or co-head of the family and is not a foster child.
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full-time student.

See Chapter 6-Income and Rent Determinations, Section 6-II.B., Dependent Deductions for more information discussion on this deduction.

#### **Elderly/Disabled Family Deduction**

See Chapter 3-Eligibility, 3-I.B., Family and Household, for a definition of elderly and disabled families and Chapter 6-Income and Rent Determinations Section 6-II.C., Elderly or Disabled Family Deduction for more information for a discussion on the deduction. The Housing Authority will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

### **7-IV.B. MEDICAL EXPENSE DEDUCTION**

Policies related to medical expenses are found in Chapter 6-Income and Rent Determinations, Section 6-II.D, Medical Expense Deduction for more information. The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the Housing Authority 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.

### **Amount of Expense**

#### Housing Authority Procedure

The Housing Authority 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 Housing Authority will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The Housing Authority will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming twelve (12) months.
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming twelve (12) months.

### **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62 years of age or a person with disabilities. The Housing Authority will verify that the family meets the definition of an elderly or disabled family provided in the Chapter 3-Eligibility, and as described in Chapter 7-Verification Section 7-IV.A, Dependent and Elderly/Disabled Household Deductions of this plan.

### **Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6-Income and Rent Determinations, Section 6-II.D., Elderly or Disabled Family Deduction for the Housing Authority's Procedure 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.

### Housing Authority Procedure

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**

#### Housing Authority Procedure

When anticipated costs are related to on-going payment of medical bills incurred in past years, the Housing Authority 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 Chapter 6-Income and Rent Determinations, Section 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter.

### **Amount of Expense** **Attendant Care**

#### Housing Authority Procedure

The Housing Authority 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 twelve (12) months.

### **Auxiliary Apparatus**

The Housing Authority must verify that the family member for whom the expense is incurred is a person with disabilities. The expense permits a family member, or members, to work. The expense is not reimbursed from another source (see Chapter 6-Income and Rent Determinations).

#### Housing Authority Procedure

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 twelve (12) months.
- If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming twelve (12) months.

### **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 Housing Authority will verify that the expense is incurred for a person with disabilities.

### **Family Member(s) Permitted to Work**

The Housing Authority must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

#### Housing Authority Procedure

- The Housing Authority 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 Chapter 6-Income and Rent Determinations.).
- 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.

#### Housing Authority Procedure

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-Income and Rent Determinations. The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the Housing Authority 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 Housing Authority will verify that the child being cared for (including foster children) is *under* the age of 13 (See Section 7-II.C. of this chapter).

### **Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

#### Housing Authority Procedure

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 Housing Authority 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 in order to be eligible for the child care deduction.

#### Housing Authority Procedure

Information to be Gathered: The Housing Authority 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 Housing Authority will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases, the Housing Authority will request verification from the agency of the member's job seeking efforts to date and require the family to submit to the Housing Authority any reports provided to the other agency.

In the event third-party verification is not available, the Housing Authority will provide the family with a form on which the family member must record job search efforts. The Housing Authority will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education: The Housing Authority 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 Housing Authority 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-Income and Rent Determinations.

#### Housing Authority Procedure

The Housing Authority will verify that the type of child care selected by the family is allowable, as described in Chapter 6-Income and Rent Determinations (6-II.F).

The Housing Authority 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.

The Housing Authority 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.

#### Housing Authority Procedure

The actual costs the family incurs will be compared with the Housing Authority'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 Housing Authority will request additional documentation, as required, to support a determination that the higher cost is appropriate.

### **U.S. Department of Housing and Urban Development (HUD) Privacy Protection Guidance for Third Parties(PIH 2015-06)**

1) **Purpose:** This notice informs all public housing agencies (PHAs) about their responsibilities for safeguarding personally identifiable information (PII) required by HUD and preventing potential breaches of this sensitive data. HUD is committed to protecting the privacy of individuals' information stored electronically or in paper form, in accordance with federal privacy laws, guidance, and best practices. HUD expects its third party business partners, including Public Housing Authorities, who collect, use, maintain, or disseminate HUD information to protect the privacy of that information in accordance with applicable law.

General HUD program requirements are set forth in 24 C.F.R. Part 5, Subpart B, Disclosure and Verification of Social Security Numbers and Employer Identification Numbers: Procedures for Obtaining Income Information. Subpart B enables HUD and

PHAs to obtain income information about applicants and participants in the covered programs through computer matches with State Wage Information Collection Agencies (SWICAs) and Federal agencies, in order to verify an applicant's or participant's eligibility for or level of assistance.

*Restrictions on Use of Income Information Obtained from SWICA and Federal Agencies.* The restrictions of 42 U.S.C. 3544(c)(2)(A) apply to the use by HUD or a PHA of income information obtained from a SWICA and the restrictions of 42 U.S.C. 3544(c)(2)(A) and of 26 U.S.C. 6103(l)(7)(C) apply to the use by HUD or a PHA of income information obtained from the Internal Revenue Service or the Social Security Administration.

The Privacy Act and other requirements for grants and contracts is spelled out in 24 C.F.R. 5.212 which states:

*Compliance with the Privacy Act.* The collection, maintenance, use, and dissemination of SSNs, EINs, any information derived from SSNs and Employer Identification Numbers (EINs), and income information under this subpart shall be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

*Privacy Act Notice.* All assistance applicants shall be provided with a Privacy Act notice at the time of application. All participants shall be provided with a Privacy Act notice at each annual income recertification. c) The Federal Acquisition Regulation (FAR), 48 C.F.R. 24.104, sets forth that compliance with the requirements of the Privacy Act be included in HUD contracts at clause 52.224-2, which provides in part:

*(a) The Contractor agrees to—*

*(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act*

#### Definitions

As used in this Notice, the following terms are defined as:

*Personally Identifiable Information (PII).* Defined in OMB M-07-16 as “. . . information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

*Sensitive Personally Identifiable Information.* PII that when lost, compromised or disclosed without authorization could substantially harm an individual. Examples of sensitive PII include social security or driver’s license numbers, medical records, and financial account numbers such as credit or debit card numbers.

**Guidance on Protecting Sensitive Privacy Information:** The Privacy Act requires that federal agencies maintain only such information about individuals that is relevant and necessary to accomplish its purpose. The Privacy Act also requires that the information be maintained in systems or records – electronic and paper – that have the appropriate administrative, technical, and physical safeguards to protect the information, however current. This responsibility extends to contractors and third-party business partners, such as Public Housing Authorities, who are required to maintain such systems of records by HUD.

a) Contractors and third-party business partners should take the following steps to help ensure compliance with federal requirements:

#### **i) Security Awareness and Privacy Training**

1. The National Institute of Standards and Technology (NIST) publishes templates and guides for what security awareness trainings should entail in order to be FISMA compliant. These guidelines focus on the following key aspects:
  - **Confidentiality** - Protecting information from unauthorized access and disclosure.
  - **Integrity** - Assuring the reliability and accuracy of information and IT resources by guarding against unauthorized information modification or destruction.
  - **Availability** - Defending information systems and resources to ensure timely and reliable access and use of information. As such, systems are vulnerable to misuse, interruptions and manipulation.
  - **Threat**- A threat in the case of IT security is the potential to cause unauthorized disclosure, unavailability, changes, or destruction of protected information.
  - **Vulnerability**- Any flaw or weakness that can be exploited and could result in a breach or a violation of a system's security policy
  - **Risk** is the likelihood that a threat will exploit vulnerability.
  - **Controls** are policies, procedures, and practices designed to decrease the likelihood, manage the impact, or minimize the effect of a threat exploiting a vulnerability
2. Additionally, the NIST provides publications for reference on Building an Information Technology Security Awareness and Training Program and Security and Privacy Controls for Federal Information Systems and Organizations
3. PHAs should maintain adequate documentation that supports the training for all staff as well as maintain auditable records of training completion. Although there is not required reporting on the training, Office of Field Operations personnel may spot-check compliance on on-site visits.

## ii) Limit Collection of PII

1. Do not collect or maintain sensitive PII without proper authorization. Collect only the PII that is needed for the purposes for which it is collected.
2. Consistent with the provisions of this Notice, PHAs may enter into agreements (or in some cases be required) to provide PII to legitimate researchers under contract or other agreement with HUD to support studies on the effects and operations of HUD programs. Further, HUD encourages PHAs to supply PII to other legitimate researchers who do not have contracts or other agreements with HUD in support of such studies, so long as the PHA in question has taken reasonable precautions to prevent disclosure of PII outside of the research team. Such reasonable precautions generally involve written agreements between the PHA and one or more researchers that specify the legal obligations of the latter to protect PII from disclosure.

## iii) Manage Access to Sensitive PII

1. Only share or discuss sensitive PII with those personnel who have a need to know for purposes of their work. Challenge anyone who asks for access to sensitive PII for which you are responsible.

2. Do not distribute or release sensitive PII to other employees, contractors, or other third parties unless you are first convinced that the release is authorized, proper and necessary.
3. When discussing sensitive PII on the telephone, confirm that you are speaking to the right person before discussing the information and inform him/her that the discussion will include sensitive PII.
4. Never leave messages containing sensitive PII on voicemail.
5. Avoid discussing sensitive PII if there are unauthorized personnel, contractors, or guests in the adjacent cubicles, rooms, or hallways who may overhear your conversations.
6. Hold meetings in a secure space (i.e., no unauthorized access or eavesdropping possible) if sensitive PII will be discussed and ensure that the room is secured after the meeting.
7. Treat notes and minutes from such meetings as confidential unless you can verify that they do not contain sensitive PII.
8. Record the date, time, place, subject, chairperson, and attendees at any meeting involving sensitive PII.

#### **iv) Protect Hard Copy and Electronic Files Containing Sensitive PII**

1. Clearly label all files containing sensitive PII by placing appropriate physical labels on all documents, removable media such as thumb drives, information systems, and application. Examples of appropriate labels might include —For Official Use Only or —For (Name of Individual/Program Office) Use Only.
2. Lock up all hard copy files containing sensitive PII in secured file cabinets and do not leave unattended.
3. Protect all media (e.g., thumb drives, CDs, etc.,) that contain sensitive PII and do not leave unattended. This information should be maintained either in secured file cabinets or in computers that have been secured.
4. Keep accurate records of where PII is stored, used, and maintained.
5. Periodically audit all sensitive PII holdings to make sure that all such information can be readily located.
6. Secure digital copies of files containing sensitive PII. Protections include encryption, implementing enhanced authentication mechanisms such as two-factor authentication, and limiting the number of people allowed access to the files.
7. Store sensitive PII only on workstations that can be secured, such as workstations located in areas that have restricted physical access.

#### **v) Protecting Electronic Transmissions of Sensitive PII via fax, email, etc.**

1. When faxing sensitive PII, use the date stamp function, confirm the fax number, verify that the intended recipient is available, and confirm that he/she has received the fax. Ensure that none of the transmission is stored in memory on the fax machine, that the fax is in a controlled area, and that all paper waste is disposed of properly (e.g., shredded). When possible, use a fax machine that uses a secure transmission line.
2. Before faxing PII, coordinate with the recipient so that the PII will not be left unattended on the receiving end.
3. When faxing sensitive PII, use only individually-controlled fax machines, not central receiving centers.
4. Do not transmit sensitive PII via an unsecured information system (e.g., electronic mail, Internet, or electronic bulletin board) without first encrypting the information.
5. When sending sensitive PII via email, make sure both the message and any attachments are encrypted.
6. Do not place PII on shared drives, multi-access calendars, the Intranet, or the Internet.

#### **vi) Protecting Hard Copy Transmissions of Files Containing Sensitive PII**

1. Do not remove records about individuals with sensitive PII from facilities where HUD information is authorized to be stored and used unless approval is first obtained from a supervisor. Sufficient justification, as well as evidence of information security, must be presented.
2. Do not use interoffice or translucent envelopes to mail sensitive PII. Use sealable opaque solid envelopes. Mark the envelope to the person's attention.
3. When using the U.S. postal service to deliver information with sensitive PII, double-wrap the documents (e.g., use two envelopes – one inside the other) and mark only the inside envelope as confidential with the statement —To Be Opened By Addressee Only.

#### **vii) Records Management, Retention, and Disposition**

1. Follow records management laws, regulations, and policies applicable within your jurisdiction.
2. Ensure all Public Housing Authority locations and all entities acting on behalf of the Authority are managing records in accordance with applicable laws, regulations, and policies.
3. Include records management practices as part of any scheduled oversight protocols.
4. Do not maintain records longer than required.
5. Destroy records after retention requirements are met.

6. Dispose of sensitive PII appropriately – use cross-cut shredders or burn bags for hard copy records and permanently erase (not just delete) electronic records.

**viii) Incident Response**

1. Supervisors should ensure that all personnel are familiar with reporting procedures.
2. Promptly report all suspected compromises of sensitive PII related to HUD programs and projects to HUD's National Help Desk at 1-888-297-8689.



## **Chapter 8 LEASING AND INSPECTIONS**

### **INTRODUCTION**

Leases are the basis of the legal relationship between the Housing Authority and the tenant. All units must be occupied pursuant to a dwelling lease agreement that complies with HUD's regulations.

HUD rules also require the Housing Authority to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, the Housing Authority may require additional inspections in accordance with Housing Authority Procedure.

This chapter is divided into two parts as follows:

Part I: Leasing. Part I contains regulatory information, when applicable, as well as the Housing Authority's policies governing leasing issues. This part describes pre-leasing activities and the Housing Authority's policies pertaining to lease execution, modification, and payments under the lease.

Part II: Inspections. This part describes the Housing Authority's policies for inspecting dwelling units.

## **PART I: LEASING**

### **8-I.A. OVERVIEW**

An eligible family may occupy a public housing dwelling unit under the terms of the lease. The lease must meet all of HUD's regulatory requirements, and must also comply with applicable state and local laws and codes.

The lease shall have a twelve (12) month term. Except as provided in 24 CFR 966.4 (a)(2)(ii), the lease term must be automatically renewed for the same period of twelve (12) months. According to 24 CFR 966.4 (a)(2)(ii), the Housing Authority may not renew the lease if the family has violated the requirement for resident performance of community service or participation in an economic self-sufficiency program (See Chapter 11-Community Service for more information).

### **8-I.B. LEASE ORIENTATION**

#### Housing Authority Procedure

After unit acceptance but prior to occupancy, a Housing Authority representative will provide the lease orientation to the family. All adult family members 18 years of age and over are required to attend the orientation.

#### **Lease Orientation Agenda**

#### Housing Authority Procedure

When families attend the lease orientation, at a minimum they will be provided with the following documents:

1. A copy of the lease
2. A copy of the Housing Authority's grievance procedure
3. A copy of the house rules
4. A copy of the Housing Authority's schedule of maintenance charges
5. A copy of the pamphlet *Protect Your Family From Lead in Your Home*
6. A copy of *Things You Should Know* (HUD-1140-OIG)
7. A copy of *Is Fraud Worth It?* (HUD-1141)
8. A copy of *What You Should Know About EIV*
9. Any other applicable forms.

The topics discussed will include, but not be limited to, the following:

1. Applicable deposits and other charges.
2. Review and explanation of lease provisions and applicable addendums.
3. Unit maintenance and work orders requests.
4. Reporting requirements (for example, income or family composition changes).
5. Explanation of occupancy forms.
6. Community service requirements.
7. Applicable lease addendums (Non-Smoking Procedure, Pet Procedure, Pool Addendum, Cable Procedure)

#### **8-I.C. EXECUTION OF THE LEASE**

The lease is executed at the time of admission for all new residents by the tenant and the Housing Authority, except for automatic renewals of the lease [24 CFR 966.4(a)(3)]. In addition, a new lease is also executed at the time of transfer from one Housing Authority unit to another.

The lease must state the composition of the household as approved by the Housing Authority (family members and any Housing Authority-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.

#### Housing Authority Procedure

The head of household, spouse or co-head, and all other adult members of the household will be required to sign the lease prior to admission. An appointment will be scheduled for the parties to execute the lease. The head of household will be provided a copy of the executed lease and the Housing Authority will retain the original in the resident's file.

Resident files for households that include a live-in aide will contain file documentation signed by the live-in aide, that the live-in aide is not a party to the lease and is not entitled to Housing Authority assistance. The live-in aide is only approved to live in the unit while serving as the attendant for the participant family member.

#### **8-I.D. MODIFICATIONS TO THE LEASE**

The lease may be modified at any time by written agreement of the tenant and the Housing Authority [24 CFR 966.4(a)(3)].

#### **Modifications to the Lease Form**

Schedules of special charges for services, repairs and utilities and rules and regulations, which are required to be incorporated in the lease by reference, shall be publicly posted in a conspicuous manner in the rental office and shall be furnished to applicants and tenants on request.

Such schedules, rules and regulations may be modified from time to time by the Housing Authority provided that the Housing Authority shall give at least a thirty (30) day written notice to each affected tenant identifying the proposed modification, the reasons for the changes, and providing the tenant an opportunity to present written comments which shall be taken into consideration by the Housing Authority prior to the proposed modification becoming effective [24 CFR 966.5]. A copy of such notice shall be:

- a. Delivered directly or mailed to each tenant; or
- b. Posted in at least three (3) conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the rental office, if any, or if none, a similar central business location within the project.

#### Housing Authority Procedure

The Housing Authority will post notices of proposed lease changes in the following locations:

1. The Rental Office of the public housing site;
2. The Administration Office of the Housing Authority; and
3. The Housing Authority's website ([www.merced-pha.com](http://www.merced-pha.com)).

The Housing Authority shall provide at least thirty (30) days' notice to tenants and resident organizations identifying proposed changes in the lease form used by the Housing Authority, and providing an opportunity to present written comments. Comments submitted shall be considered by the Housing Authority before formal adoption of any new lease form [24 CFR 966.3].

#### Housing Authority Procedure

When the Housing Authority proposes to modify or revise schedules of special charges or rules and regulations, the Housing Authority will post a copy of the notice in the Administration Office, and may mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file.

After the time period for public inspection of the proposed changes has occurred, the proposed changes will be incorporated into the lease and submitted to the Housing Authority's Board of Commissioners for approval. Once the revised lease has been approved by the Board of Commissioners, each family must be notified at least sixty (60) days in advance of the effective date of the new lease form or lease revision.

A resident's refusal to accept permissible and reasonable lease modifications that are made in accordance with HUD requirements, or are required by HUD, is grounds for termination of tenancy [24 CFR 966.4(l)(2)(iii)(E)].

#### Housing Authority Procedure

The resident family will have thirty (30) days to accept the revised lease. If the family does not accept the offer of the revised lease within that thirty (30) day timeframe, the family's tenancy will be terminated for other good cause in accordance with the policies in Chapter 13-Lease Terminations.

After the lease revisions become effective they must be publicly posted in a conspicuous manner in all development rental offices and other appropriate locations and must be furnished to applicants and tenants on request [24 CFR 966.5].

#### Housing Authority Procedure

The Housing Authority will post notices of proposed lease changes in the following locations:

1. The Rental Office of the public housing site;
2. The Administration Office of the Housing Authority; and
3. The Housing Authority's website (www.merced-pha.com).

#### **Other Modifications**

#### Housing Authority Procedure

- A new lease will be executed to reflect all changes in family composition.
- If, for any reason, any member of the household ceases to reside in the unit, the Housing Authority will execute a new lease. All family members 18 years old or older are required to sign the lease.
- If a new household member is approved by the Housing Authority to reside in the unit, the Housing Authority will execute a new lease. All family members 18 years old or older are required to sign 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)]**

The Housing Authority will require security deposits. The amount of the security deposit cannot exceed one month's rent or a reasonable fixed amount as determined by the Housing Authority. The Housing Authority 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.

See Chapter 10-Pet Ownership, regarding pet deposit requirements.

Housing Authority Procedure

Upon signing the lease but before occupying the unit, the resident shall pay a security deposit (in addition to the rent owed) according to the following:

1 Bedroom Units: A minimum security deposit of \$300 or one month's rent, whichever is higher.

2-3 Bedroom Units: A minimum security deposit of \$500 or one month's rent, whichever is higher.

4-5 Bedroom Units: A minimum security deposit of \$800 or one month's rent, whichever is higher.

The Housing Authority will hold the security deposit for the period the family occupies the unit. The Housing Authority will not use the security deposit for rent or other charges while the resident is living in the unit.

Within twenty-one (21) calendar days of the move-out, the Housing Authority will refund to the resident the amount of the security deposit less any amount needed to pay the cost of unpaid rent, damages listed on the move-out inspection report that exceed normal wear and tear, and other charges due under the lease.

The Housing Authority will provide the resident with a written list of any charges against the security deposit within twenty-one (21) calendar days of the move-out. If the resident disagrees with the amount charged, the Housing Authority will provide an opportunity for the family to meet with a Housing Authority representative to discuss the charges.

If the resident transfers to another public housing unit, the Housing Authority will transfer the security deposit to the new unit. The tenant will be billed for any maintenance or others charges due for the "old" unit and if applicable any increases in the security deposit for the "new" unit.

**8-I.F. PAYMENTS AND CHARGES UNDER THE LEASE Rent Payments [24 CFR 966.4(b)(1)]**

Families must pay the amount of the monthly tenant rent determined by the Housing Authority 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. The Housing Authority must give written notice stating any change in the amount of tenant rent and when the change is effective.

Housing Authority Procedure

The tenant rent is due and payable at the Housing Authority-designated location by the 7<sup>th</sup> day of the month. If the 7<sup>th</sup> day of the month falls on a weekend or holiday, the rent is due and payable on the first business day thereafter.

If a family's tenant rent changes, the Housing Authority will notify the family of the new amount and the effective date by sending a "Notice of Rent Determination" which will

become an amendment to the lease.

Rental payments are to be paid by money order, certified check or personal check. All personal checks must be printed with the resident's name and current address. No two-party checks will be accepted.

**Late Fees [24 CFR 966.4(b)(3)]**

At the option of the Housing Authority, the lease may provide for payment of penalties for late payment. The late fees are not due and collectible until two weeks after the Housing Authority 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 Housing Authority grievance procedures. The Housing Authority 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)].

Housing Authority Procedure

If the resident fails to make a rent payment by the end of the posted office hours by the 7<sup>th</sup> day of the month, a late fee of \$25 will be charged. If the family requests a grievance hearing within the required timeframe, the Housing Authority may not take action for nonpayment of the fee until the conclusion of the grievance process. If the resident can document financial hardship, the late fee may be waived on a case-by-case basis.

If a personal check is returned by the bank for any reason (for example, insufficient funds) a returned check fee of \$50 will be charged to the tenant's account and the tenant will no longer be eligible to pay with a personal check.

All late and returned check fees must be paid by money order or certified check.

**Other Charges [24 CFR 966.4(b)(2)(3)]**

The lease shall provide for charges to the tenant for maintenance and repair beyond normal wear and tear and for consumption of excess utilities. The lease shall state the basis for the determination of such charges (for example, by a posted schedule of charges for repair, amounts charged for utility consumption in excess of the allowance stated in the lease, etc.). The imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances.

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 all development rental offices and other appropriate locations and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease shall provide that the charges assessed (other than tenant rent) shall not be due and collectible until two weeks after the Housing Authority gives written notice of the charges. Such notice constitutes a notice of adverse action, and must meet the requirements governing a notice of adverse action (see 24 CFR 966.4(e)(8)). 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 Housing Authority grievance procedures. The Housing Authority 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)(ii)(A)].

#### Housing Authority Procedure

Families will be charged for maintenance and repair beyond normal wear and tear according to the Housing Authority's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable). Nonpayment of maintenance and repair charges is a violation of the lease and is grounds for lease termination.

## **PART II: INSPECTIONS**

### **8-II.A. OVERVIEW**

HUD regulations require the Housing Authority to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, the Housing Authority may require additional inspections, in accordance with Housing Authority Procedure. This part contains the Housing Authority's policies governing inspections, notification of unit entry, and inspection results.

### **8-II.B. TYPES OF INSPECTIONS**

#### **Move-In (Pre-Occupancy) Inspections [24 CFR 966.4(i)]**

The lease shall provide that the Housing Authority and the tenant or representative shall be obligated to inspect the dwelling unit prior to commencement of occupancy by the tenant. The Housing Authority will furnish the tenant with a written inspection form of the condition of the dwelling unit, and the equipment provided with the unit. The inspection form shall be signed by the Housing Authority and the tenant. A copy of the inspection form shall be provided to the resident and the original shall be retained by the Housing Authority in the resident's file.

#### Housing Authority Procedure

The Head of Household must attend the initial inspection and sign the inspection form.

#### **Move-Out (Post-Occupancy) Inspections [24 CFR 966.4(i)]**

The Housing Authority shall be further obligated to inspect the unit at the time the tenant vacates the unit and to furnish the tenant a statement of any charges to be made in accordance with Section 8-I-F above. The Housing Authority should make a provision if the tenant's participation in the Move-Out Inspection is required, unless the tenant vacates without notice to the Housing Authority.

The Housing Authority 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.

#### Housing Authority Procedure

Tenants may request a pre-move-out inspection fourteen (14) days prior to move out to allow the family to prepare the unit for the move-out inspection.



The Housing Authority will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within twenty-one (21) business days of conducting the move-out.

### **Annual Inspections**

The Housing Authority is responsible for conducting a physical inspection of HUD Housing, to determine compliance in accordance with HUD's Uniform Physical Condition Standards (UPCS). The inspection must be conducted annually unless the program regulations governing the housing provide otherwise or unless HUD has provided otherwise by notice [24 CFR 5.705].

### **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

#### Housing Authority Procedure

On an annual basis, the Housing Authority may conduct supervisory quality control inspections, on five percent (5%) of all units, or five (5) total units, whichever is greater. Quality control inspections will be completed within forty-five (45) days of the original inspection.

### **Special Inspections**

#### Housing Authority Procedure

Housing Authority 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
- Pre-REAC (Prior to HUD's Real Estate Assessment Center (REAC) Inspection)

### **Other Inspections**

#### Housing Authority Procedure

Building exteriors, grounds, common areas and systems will be inspected according to the Housing Authority's maintenance plan.

### **8-II.C. NOTICE OF ENTRY OF DWELLING UNIT DURING TENANCY [24 CFR 966.4 (j)(k)]**

The lease shall set forth the circumstances under which the Housing Authority may enter

the dwelling unit during the tenant's possession thereof, which shall include provision that:

1. Non-Emergency Entries: The Housing Authority shall, upon reasonable advance notification to the tenant, be permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections (annual inspections) and maintenance, for making improvement or repairs, or to show the dwelling unit for re-leasing. A written statement specifying the purpose of the Housing Authority entry delivered to the dwelling unit at least twenty-four (24) hours before such entry shall be considered reasonable advance notification;
2. Emergency Entries: The Housing Authority may enter the dwelling unit at any time without advance notification when there is reasonable cause to believe that an emergency exists; and
3. If all members of the household are absent from the dwelling unit at the time of entry, the Housing Authority shall leave in the dwelling unit a written statement specifying the date, time and purpose of entry prior to leaving the dwelling unit.

The lease shall provide procedures to be followed by the Housing Authority and the tenant in giving notice one to the other which shall require that:

- Except as provided in the paragraph above regarding emergency entries, notice to a tenant shall be in writing and delivered to the tenant or to an adult member of the tenant's household residing in the dwelling or sent by prepaid first-class mail properly addressed to the tenant; and
- Notice to the Housing Authority shall be in writing, delivered to the rental office or sent by prepaid first-class mail properly addressed.
- If the tenant is visually impaired, all notices must be in an accessible format.

#### Housing Authority Procedure

##### Non-Emergency Entries:

- The Housing Authority will notify the resident in writing at least twenty-four (24) hours prior to any non-emergency inspection. For regular annual inspections, the family may receive at least two (2) weeks written notice of the inspection to allow the family to prepare the unit for the inspection.
- Entry for repairs requested by the family will not require prior notice unless the tenant specifies otherwise. Resident-requested repairs presume permission for the Housing Authority to enter the unit.
- Scheduling of Annual Inspections:
  - Inspections will be conducted during business hours. If a family needs to reschedule an inspection, they must notify the Housing Authority at least forty-eight (48) hours prior to the scheduled inspection. The Housing Authority will reschedule the inspection no more than once unless the resident has a verifiable good cause to delay the inspection. The Housing Authority may request

verification of such cause.

### **Attendance at Inspections**

Residents are only required to attend the Move-In Inspection. There is no HUD requirement regarding resident participation at annual or other types of inspections.

#### Housing Authority Procedure

Except at move-in inspections, the resident is not required to be present for the inspection. The resident may attend the inspection. If all members of the household are absent from the dwelling unit at the time of entry, the Housing Authority shall leave in the dwelling unit a written statement specifying the date, time and purpose of entry prior to leaving the dwelling unit. However, an inspection will be rescheduled once by the Housing Authority if there are only minors occupying the unit at the time of the inspection.

### **8-II.D. RESIDENT AND HOUSING AUTHORITY RIGHTS AND OBLIGATIONS REGARDING NOTIFICATION OF EMERGENCY AND NON-EMERGENCY REPAIRS**

#### **Emergency Repairs [24 CFR 966.4(h)]**

The lease shall set forth the rights and obligations of the tenant and the Housing Authority if the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants and shall provide that:

1. The tenant shall immediately notify project management of the damage;
2. The Housing Authority shall be responsible for repair of the unit within a reasonable time: Provided, that if the damage was caused by the tenant, tenant's household or guests, the reasonable cost of the repairs shall be charged to the tenant;
3. The Housing Authority shall offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time; and
4. Provisions shall be made for abatement of rent in proportion to the seriousness of the damage and loss in value as a dwelling if repairs are not made in accordance with #2 above of this list or alternative accommodations not provided in accordance with 3 above, except that no abatement of rent shall occur if the tenant rejects the alternative accommodation or if the damage was caused by the tenant, tenant's household, or guests.

#### Housing Authority Procedure

When conditions in the unit are hazardous to life, health, or safety, the Housing Authority 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 gas or fuel oil leaks;

- Any electrical problem or condition that could result in shock or fire
- Absence of a working heating system when the inside temperature is below 68 degrees Fahrenheit and there are infants and/or elderly living in the home, or for a reasonable accommodation;
- Utilities provided by the Housing Authority 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 all functioning toilet(s) in the unit;
  - Inoperable smoke detector; and/or
  - Inoperable carbon monoxide detector.

If the emergency repair damage was caused by a household member or guest, the Housing Authority may take lease enforcement action against the family (see Chapter 13- Lease Terminations).

The family must allow the Housing Authority access to the unit to make repairs.

**Bedbugs [PIH Notice 2012-17]**

The Housing Authority should respond with urgency to any tenant report of bedbugs. Within 24 hours of the tenant report, the Housing Authority should make contact with the tenant, provide the tenant with information about control and prevention of bedbugs and discuss measures the tenant may be able to take in the unit before the inspection is performed. However, a bedbug inspection and, if necessary, treatment, may take time to schedule. The Housing Authority should endeavor to take appropriate action within a reasonable time period using the guidelines provided below.

Following a report of bedbugs, the Housing Authority or a qualified third party trained in bedbug detection should inspect the dwelling unit to determine if bedbugs are present. It is critical that inspections be conducted by trained staff or third party professionals. Low level inspections may escape visual detection. For this reason, multiple detection tools are recommended. Recent research indicates that “active” bedbug monitors containing attractants can be effective tools for detecting early infestations. Some licensed pest control applicators use canine detection to verify the presence of bedbugs. The inspection should cover the unit reporting the infestation and no less than surrounding apartments consisting of the units above, below, left and right, and should be completed within three (3) business days of a tenant complaint if possible. If reputable, licensed pest control companies are unattainable within three (3) calendar days, the Housing Authority is required to retain documentation of the efforts to obtain qualified services. If an infestation is suspected but cannot be verified using the methods described above, the Housing Authority should re-inspect the unit(s) periodically over the next several months.

When an infestation is identified, the unit and surrounding units should be treated for

bedbugs. Chemical treatments are necessary, but not reliable. Therefore, encasement, interception devices, vacuuming, steaming, freezing and commodity or building heat treatments may be utilized as part of the bedbug control effort. Infestations are rarely controlled in one visit. Effective treatment may require two to three visits, and possibly more. The length, method and extent of the treatment will depend on the severity and complexity of the infestation, and the level of cooperation of the residents.

A Housing Authority may not deny tenancy to a potential resident on the basis of the tenant having experienced a prior bedbug infestation, nor may give residential preference to any tenant based on a response to a question regarding prior exposure to bedbugs. A Housing Authority may not charge a tenant to cover the cost of bedbug treatment; such costs should be covered by the Housing Authority. HUD reserves the right to approve Lease Addenda. Lease Addenda may not conflict with this Notice.

The tenant will not be expected to contribute to the cost of the treatment effort. The tenant will not be reimbursed the cost of any additional expense to the household, such as purchase of new furniture, clothing or cleaning services.

#### Housing Authority Procedure

This Procedure is in accordance to HUD guidance PIH 2012-17 on the growing problem of bedbugs and proper elimination of bedbug infestations. This Procedure outlines the responsibilities of the Housing Authority as well as the rights and responsibilities of the tenants in dealing with bedbug education and elimination procedure.

Tenants will be required to immediately report to the Housing Authority the suspicion of possible bed bugs in a housing unit or other area of the property. Tenants are the first line of defense against bedbug infestations and are encouraged to create living environments that deter bedbugs. Units may be inspected for unreasonable amounts of clutter that create hiding places for bedbugs.

Tenants should be advised of the following:

- A Housing Authority may not deny tenancy to a potential resident on the basis of the tenant having experienced a prior bedbug infestation, nor may an owner give residential preference to any tenant based on a response to a question regarding prior exposure to bedbugs.
- A tenant reporting bedbugs may expect expeditious response and attention by the Housing Authority, but should be advised that an inspection and, if necessary treatment of bedbugs, may take time to schedule. The inspections should occur within three (3) business days of the tenant report when possible.
- Following a report of bedbugs, the Housing Authority or qualified third party trained in bedbug detection should inspect the dwelling unit to determine if bed bugs are present. It is critical that inspections be conducted by trained staff or third party professionals. The Housing Authority may enter the unit to perform these activities in accordance with the lease
- If bedbug infestation is found in the unit, the tenant may expect treatment to begin within five (5) days of the inspection, though depending on the form of treatment,

this may not be possible. Tenant should be advised that treatment may take several weeks.

- Tenants are expected to cooperate with the treatment efforts by allowing for heat treatment of clothing and furniture and refraining from placement of infested furniture or other items in common areas. Tenant cooperation is shown to expedite the control of bedbugs and to prevent spreading of infestation
- The tenant is required to follow the instructions provided by the professional exterminator and pay for proper treatment of all personal items including pets.
- The tenant will not be expected to contribute to the cost of the professional exterminator to treat the unit.
- The tenant will not be reimbursed the cost of any additional expense to the household, such as purchase of new furniture, clothing or cleaning services.
- The Housing Authority reserves the right to terminate the resident's tenancy and require the resident to vacate the rental unit in the event that the:
  - Resident's action or inaction prevents treatment of an infestation;
  - Resident fails to comply with the requirements of this Procedure

The Housing Authority will respond with urgency to any tenant report of bedbugs. Within 24 hours of the tenant report, the Housing Authority will make contact with the tenant, provide the tenant with information about bed bugs, and discuss measures the tenant may be able to take in the unit before the inspection is performed. However a bedbug inspection and, if necessary, treatment takes time to schedule. The Housing Authority will endeavor to take appropriate action within a reasonable time period.

The inspection will cover the unit reporting the infestation and surrounding units consisting of the units to the left and right, and will be completed within three (3) business days of a tenant complaint if possible. If an infestation is suspected but cannot be verified using the methods described above, the Housing Authority should re-inspect the unit(s) periodically over the next several months.

After any infestation and treatment, unit inspections for those units will occur after one month, then again at the three (3) month period and again after six (6) months to verify a pest free environment.

### **Non-emergency Repairs**

The Housing Authority shall identify the rights and obligations of the tenant and the Housing Authority regarding making non-emergency (non-life threatening) repairs.

#### Housing Authority Procedure

The Housing Authority will correct non-life threatening health and safety defects within fifteen (15) business days of the inspection date. If the Housing Authority is unable to make repairs within that period due to circumstances beyond the Housing Authority's control (e.g. required parts or services are not available, weather conditions, etc.) the Housing Authority will notify the family of an estimated date of completion.

The family must allow the Housing Authority access to the unit to make repairs.

### **8-II.E. INSPECTION RESULTS (Repairs)**

The Housing Authority is obligated to maintain dwelling units and the development in a decent, safe and sanitary condition and to make necessary repairs to dwelling units [24 CFR 966.4(e)].

### **Resident-Caused Damages**

#### Housing Authority Procedure

- Damages to the unit by the resident and/or guests/visitors of the resident, beyond normal wear and tear will be charged to the tenant.
  
- Repeated or excessive damages to the unit beyond normal wear and tear will be considered a serious or repeated violation of the lease.
  
- **A Notice of Lease Termination will be served to residents if the resident or resident's guests/visitors deliberately disengage the dwelling unit's smoke detector(s) and/or carbon monoxide detector(s).**

### **Housekeeping**

#### Housing Authority Procedure

Tenants 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 Housing Authority will provide proper notice of a lease violation.

Upon inspection by the Housing Authority that a non-emergency health or safety risk housekeeping habit exists, a reinspection of the unit will be conducted within thirty (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 **will** result in termination of tenancy in accordance with Chapter 13 Lease Terminations.

**Chapter 9**  
**REEXAMINATIONS**  
**[24 CFR 960.257, 960.259, 966.4]**

**INTRODUCTION**

The Housing Authority is required to monitor each family's income and household composition at least annually, and to adjust the family's rent accordingly. The Housing Authority must adopt admission and occupancy policies concerning conduct of annual and interim reexaminations in accordance with 24 CFR 960.257 and shall conduct reexaminations in accordance with such policies. All annual activities will be coordinated in accordance with HUD Regulations. It is a HUD requirement that families report all changes in household composition. This chapter defines the Housing Authority's Procedure for conducting annual reexaminations and coordinating annual activities. It also explains the interim reporting requirements for families, and the standards for timely reporting.

This chapter discusses both annual and interim reexaminations.

Part I: Annual Reexaminations. This part discusses the requirements for annual reexamination of income and household composition.

Part II: Reexaminations for Families Paying Flat Rents. This part contains the Housing Authority's policies for conducting full reexaminations of family income and household composition for families paying flat rents.

Part III: Interim Reexaminations. This part includes HUD requirements and Housing Authority policies related to when a family may and must report changes that occur between annual reexaminations.

Part IV: Recalculating Tenant Rent. After gathering and verifying required information for an annual or interim reexamination, the Housing Authority must recalculate the tenant rent. While the basic policies that govern these calculations are provided in Chapter 6-Income and Rent Determination, this part identifies policies that affect these calculations during a reexamination.

**PART I: ANNUAL REEXAMINATIONS FOR FAMILIES PAYING INCOME BASED RENTS [24 CFR 960.257]**

**9-I.A. OVERVIEW**

HUD requires that the Housing Authority offer all families the choice of paying income-based rent or flat rent at least annually. The Housing Authority's policies for offering families a choice of rents are located in Chapter 6-Income and Rent Determinations.

For families who pay an income-based rent, the Housing Authority must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a)(1)].

In addition, the Housing Authority must review family compliance with the community service requirements, and must verify such compliance annually at least thirty (30) days before the end of the twelve (12) month lease term. If qualifying activities are administered



by an organization other than the Housing Authority, the Housing Authority shall obtain verification of family compliance from such third parties [24 CFR 960.605 (c)(3)].

This part contains the Housing Authority's policies for conducting reexaminations of families who choose to pay income-based rents.

### **9-I.B. SCHEDULING ANNUAL REEXAMINATIONS**

For families who pay an income-based rent, the Housing Authority must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a)(1)]. The Housing Authority reexamination policies must be in accordance with the Public Housing Agency plan [24 CFR 960.257(c)].

#### Housing Authority Procedure

- Anniversary date is defined as twelve (12) months from the effective date of the family's last annual reexamination or, date of admission to Public Housing.
- The Housing Authority 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 Housing Authority is required to obtain information needed to conduct annual reexaminations. The family must supply any information requested by the Housing Authority or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements [24 CFR 960.259].

#### Housing Authority Procedure

- Families are required to participate in an annual reexamination appointment, which must be attended by the head of household, spouse or co-head, and any other adult members. If participation in an in-person appointment poses a hardship because of a family member's disability, the family should contact the Housing Authority to request a reasonable accommodation.
- Families will be notified of an annual reexamination appointment. The notification will contain the date, time, and location of the appointment. In addition, the family will be informed of the information and documentation that must be brought to the appointment.
- If the family is unable to attend a scheduled appointment, the family should contact the Housing Authority in advance of the appointment to schedule a new appointment. In all circumstances, if a family does not attend the scheduled appointment, the Housing Authority will send a second notification with a new appointment time.
- If a family fails to attend two scheduled appointments without Housing Authority approval, the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13 Lease Terminations.

- An advocate, interpreter, or other assistant may assist the family in the reexamination process. (See the Housing Authority's Language Access Plan (LAP) for additional information)

### **9-I.C. CONDUCTING ANNUAL REEXAMINATIONS**

The terms of the lease require the tenant to furnish such information and certifications regarding family composition and income as may be necessary for the Housing Authority to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size [24 CFR 966.4(c)(2)].

The information provided by the family must be verified in accordance with the policies in Chapter 7-Verification. Certain types of information that have already been verified by the Housing Authority at the time of admission to the public housing program, typically do not need to be re-verified on an annual basis, unless the family reports a change, requests to add a family member or the Housing Authority has reason to believe a change has occurred in information previously reported by the family. Types of information that typically does not need to be re-verified at reexamination include the following:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

#### Housing Authority Procedure

- 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 Housing Authority designated reexamination packet, as well as supporting documentation related to the family's income, expenses, and household composition.
- Any required documents or information that the family is unable to provide at the time of the appointment must be provided within ten (10) calendar days of the appointment. 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, Lease Terminations.

### **Change in Unit Size**

Changes in family or household composition may make it necessary to consider transferring the family to another public housing unit to comply with occupancy standards. The Housing Authority may use the results of the annual reexamination to require the family to move

to an appropriate unit size [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12, Transfer Procedure.

### **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 Procedure in Chapter 13, Lease Terminations, Section 13.IV.B., Conducting Criminal Records Checks.

### **Verification of Lifetime Sex Offender Registration**

For any admissions after June 25, 2001 (the effective date of the Screening and Eviction for Drug Abuse and other Criminal Activity final rule), if the reexamination screening reveals that the tenant or a member of the tenant's household is subject to a lifetime sex offender registration requirement, or that the tenant has falsified information or otherwise failed to disclose criminal history on the application and/or reexamination forms, the Housing Authority will propose termination of tenancy. The Housing Authority will use the following at each reexamination determination:

1. Ask households whether any member is subject to a lifetime registration requirement under a state sex offender registration program.
2. Use the Dru Sjodin National Sex Offender website at [www.nsopw.gov](http://www.nsopw.gov) to confirm that applicants and federal housing assistance recipients are not lifetime registered sex offenders.
3. Aggressively pursue termination of tenancy or assistance, as appropriate, for tenants subject to a state lifetime sex offender registration requirement to the extent currently allowed by law.

### Housing Authority Procedure

Each household member 18 years of age and over will be required to sign a consent form for a criminal background check as part of the annual reexamination process.

### **Compliance with Community Service**

For families who include individuals that are not exempt from the community service requirement, the Housing Authority must determine compliance once each twelve (12) months with community service and self-sufficiency requirements in 24 CFR 950, Subpart F [24 CFR

960.257(a)(3)]. See Chapter 11, Community Service for the Housing Authority's policies governing compliance with the community service requirement.

### **9-I.D. EFFECTIVE DATES**

For families who pay an income-based rent, the Housing Authority must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a)(1)].

### Housing Authority Procedure

- 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 thirty (30) days in advance. *Anniversary date* is defined as twelve (12) months from the effective date of the family's last annual reexamination or, date of admission to Public Housing. If less than thirty (30) days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the thirty (30) day notice period.

If the Housing Authority chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the Housing Authority, but will always allow for the thirty (30) day notice period.

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16, Program Administration.

- A *decrease* in the tenant rent that results from an annual reexamination may take effect on the family's anniversary date.

If the Housing Authority chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the Housing Authority. *Anniversary date* is defined as twelve (12) months from the effective date of the family's last annual reexamination or, date of admission to Public Housing.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the Housing Authority by the date specified, and this delay prevents the Housing Authority from completing the reexamination as scheduled.

### **Pending Litigation [PIH Notice 2012-10]**

If a family is subject to litigation (for example unlawful detainer) at the time of annual reexamination and the Housing Authority is unable to complete the reexamination by the anniversary date, the Housing Authority must submit the following information to HUD Headquarters (HHQ) via email to [PIH.RHIIP.TA@HUD.GOV](mailto:PIH.RHIIP.TA@HUD.GOV) and a copy to the local HUD field office within thirty (30) calendar days of the date the Housing Authority initiation litigation:

1. Housing Authority Certification signed and dated by the Executive Director or designated official on the Housing Authority's letterhead, which states the following:
  - I certify under the penalties of perjury that the attached list of head of household (HOH) names have an overdue annual re-exam due to pending litigations initiated

by the Housing Authority or tenant. I agree to submit an updated form HUD-50058 to PIC, in accordance with HUD guidance once the court has issued a final order or family discontinues participation in a PIH rental assistance program, whichever occurs first.

- I understand that HUD may request copies of the court proceedings filed with the court and agree to furnish such documents with any documents associated with the pending litigation upon written request of a HUD official.

2. A listing of HOHs in which there is pending litigation, the type of pending litigation pending (i.e. wrongful termination, breach of lease, tenant holding over action, etc.) the date the litigation began and the court-assigned case number.

- Housing Authority's must download the Earned Income Verification (EIV) Identity Verification/Failed EIV Pre-screening report into Excel (prior to implementing action item #3 below) to create the listing, however, the Housing Authority must delete all tenant social security numbers before sending the file to HUD.
- Add the following columns to the report and provide the applicable information:
  - Date Litigation Initiated
  - Court Assigned case number
  - Type of Litigation

3. The Housing Authority will successfully submit an action type 3 (interim reexamination) form HUD-50058 to HUD's Public and Indian Housing Center (PIC) in which line 2b, effective date contains a current date; line 2i, projected effective date of next reexamination is equal to a date twelve (12) months from the date listed on line 2b; and any line between 2q – 2u (Housing Authority use only) contains the words "Pending Litigation".

## **PART II: REEXAMINATIONS FOR FAMILIES PAYING FLAT RENTS [24 CFR 960.257(2)]**

### **9-II.A. OVERVIEW**

HUD requires that the Housing Authority offer all families the choice of paying income-based rent or flat rent at least annually. The Housing Authority's policies for offering families a choice of rents are located in Chapter 6-Income and Rent Determinations.

If the family chose a flat rent for the previous year, the Housing Authority is required to provide the amount of income-based rent for the subsequent year only the year the Housing Authority conducts an income reexamination or if the family specifically requests it and submits updated income information [24 CFR 960.253(e)(2)].

In addition, for all residents of public housing, whether those residents are paying income-based or flat rents, the Housing Authority must conduct an annual review of the community service requirement compliance.

This part contains the Housing Authority'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**

For families who choose flat rents, the Housing Authority must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every three (3) years in accordance with the procedures in 960.253(f) [24 CFR 960.257(a)(2)].

#### Housing Authority Procedure

In conducting full reexaminations for families paying flat rents, the Housing Authority will follow the same 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 (“FLAT RENT ANNUAL UPDATE”)**

As noted above, full reexaminations are conducted every three (3) years for families paying flat rents. In the years between full reexaminations, regulations require the Housing Authority to conduct an annual 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 Housing Authority does not collect information about the family’s income and expenses, and the family’s rent is not recalculated following an annual update.

#### **Scheduling**

For families who choose flat rents, the Housing Authority must conduct a reexamination of household composition at least annually 24 CFR 960.257(a)(2)].

#### Housing Authority Procedure

In scheduling the annual update, the Housing Authority will follow the Procedure used for scheduling the annual reexamination of families paying income-based rent as set forth in Section 9-I.B. , Scheduling Annual Reexaminations.

#### **In Person Appointments**

- Families are required to participate in an annual update appointment, which must be attended by the head of household, spouse or co-head, and anyone over 18 years of age. If participation in an in-person appointment poses a hardship because of a family member’s disability, the family should contact the Housing Authority to request a reasonable accommodation.
  
- 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 Housing Authority packet, as well as supporting documentation related to the family composition.
  
- Any required documents or information that the family is unable to provide at the

time of the appointment must be provided within ten (10) calendar days of the appointment. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

### **Appointments by Mail**

- Families will be notified of an annual reexamination appointment. The notification will contain the date, time, and location of the appointment. In addition, the family will be informed of the information and documentation that must be brought to the appointment. The family will have ten (10) calendar days to submit the required information to the Housing Authority. If the family is unable to obtain the information or documents within the required time frame, the family may request an extension. The Housing Authority 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 Housing Authority will send a second written notice to the family. The family will have ten (10) calendar days from the date of the second notice to provide the missing information or documentation to the Housing Authority.

### **Conducting Annual Updates**

The terms of the lease require the tenant to furnish such information and certifications regarding family composition as may be necessary for the Housing Authority to make determinations with respect to eligibility, and the appropriateness of dwelling size [24 CFR 966.4(c)(2)].

The information provided by the family must be verified in accordance with the policies in Chapter 7. Verification. Certain types of information that have already been verified by the Housing Authority at the time of admission to the public housing program, typically do not need to be re-verified on an annual basis, unless the family reports a change, or the Housing Authority has reason to believe a change has occurred in information previously reported by the family.

Types of information that typically do not need to be re-verified at reexamination include the following:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

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, lease Terminations.

### **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 Procedure in – Chapter, 13 Lease Terminations, Section IV.B, Conducting Criminal Records Checks.

### **Verification of Lifetime Sex Offender Registration**

For any admissions after June 25, 2001 (the effective date of the Screening and Eviction for Drug Abuse and other Criminal Activity final rule), if the reexamination screening reveals that the tenant or a member of the tenant’s household is subject to a lifetime sex offender registration requirement, or that the tenant has falsified information or otherwise failed to disclose his or her criminal history on the application and/or reexamination forms, the Housing Authority will propose termination of tenancy. The Housing Authority will use the following at each reexamination determination:

1. Ask households whether any member is subject to a lifetime registration requirement under a state sex offender registration program.
2. Use the Dru Sjodin National Sex Offender website at [www.nsopw.gov](http://www.nsopw.gov) to confirm that applicants and federal housing assistance recipients are not lifetime registered sex offenders.
3. Aggressively pursue termination of tenancy or assistance, as appropriate, for tenants subject to a state lifetime sex offender registration requirement to the extent currently allowed by law.

### **Housing Authority Procedure**

Each household member 18 years of age and over will be required to sign a consent form for a criminal background check as part of the annual reexamination process.

### **Compliance with Community Service**

For families who include individuals that are not exempt from the community service requirement, the Housing Authority must determine compliance once each twelve (12) months with community service and self-sufficiency requirements in 24 CFR 950, Subpart F [24 CFR 960.257(a)(3)]. See Chapter 11-Community Service for the Housing Authority’s policies governing compliance with the community service requirement.

### **Change in Family or Household Composition**

Changes in family or household composition may make it necessary to consider transferring the family to another public housing unit to comply with occupancy standards or may cause a change in the monthly rental amount. The Housing Authority may use the results of the annual update to require the family to move to an appropriate unit size [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12, Transfer Procedure.

Changes to the family or household composition may affect the family’s monthly rent. During the Flat Rent Annual Update, the family may have the option of switching from Flat Rent to Income-Based Rent.



### Housing Authority Procedure

If the family or household composition effects the family's monthly rental obligations, the Housing Authority will conduct a full reexamination and 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.

### **Pending Litigation [PIH Notice 2012-10]**

If a family is subject to litigation (for example unlawful detainer) at the time of annual reexamination the Housing Authority is unable to complete the reexamination by the anniversary date, the Housing Authority must submit the following information to HUD Headquarters (HHQ) via email to **PIH.RHIIP.TA@HUD.GOV** and a copy to the local HUD field office within thirty (30) calendar days of the date the Housing Authority initiation litigation:

1. Housing Authority Certification signed and dated by the Executive Director or designated official on the Housing Authority 's letterhead, which states the following:
  - I certify under the penalties of perjury that the attached list of head of household (HOH) names have an overdue annual re-exam due to pending litigations initiated by the Housing Authority or tenant. I agree to submit an updated form HUD-50058 to PIC, in accordance with HUD guidance once the court has issued a final order or family discontinues participation in a PIH rental assistance program, whichever occurs first.
  - I understand that HUD may request copies of the court proceedings filed with the court and agree to furnish such documents with any documents associated with the pending litigation upon written request of a HUD official.
2. A listing of HOHs in which there is pending litigation, the type of pending litigation pending (i.e. wrongful termination, breach of lease, tenant holding over action, etc.) the date the litigation began and the court-assigned case number.
  - Housing Authority's must download the EIV Identity Verification/Failed EIV Pre-screening report into Excel (prior to implementing action item 3 below) to create the listing, however, the Housing Authority must delete all tenant social security numbers before sending the file to HUD.
  - Add the following columns to the report and provide the applicable information:
    - Date Litigation Initiated
    - Court Assigned case number
    - Type of Litigation
3. The Housing Authority will successfully submit an action type 3 (interim reexamination) form HUD-50058 to HUD's Public and Indian Housing Center (PIC) in which line 2b, effective date contains a current date; line 2i, projected effective date of next reexamination is equal to a date twelve (12) months from the date listed on line 2b; and any line between 2q – 2u (Housing Authority use only) contains

the words "Pending Litigation".

### **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 Housing Authority policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the Housing Authority must process interim reexaminations to reflect those changes. HUD regulations also permit the Housing Authority 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 Housing Authority must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and Housing Authority policies describing what changes families are required to report, what changes families may choose to report, and how the Housing Authority will process both Housing Authority- and family-initiated interim reexaminations.

The Housing Authority shall have the right to require the resident to attend an interim rent review. Resident may request an interim rent review at any time. Resident shall attend any meetings held to conduct the interim at the time and place specified by the Housing Authority or, if requested by the resident, at an alternative time during normal Housing Authority business hours. Resident will be required to provide to the Housing Authority complete and accurate information as specified by the Housing Authority (reasonable accommodations may be made for individuals requiring in home visits).

The Housing Authority will review the EIV Income report for each New Admission (form HUD-50058 action type 1 within 120 days of the participant's admission date to confirm/validate the income reported by the family during the initial eligibility determination. Any income discrepancies will be resolved with the family within sixty (60) days of the date the EIV Income Report was run and a copy of the EIV income report will be placed in the tenant file.

#### **9-III.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

The Housing Authority must adopt policies describing when and under what conditions the family must report changes in family composition.

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-Transfer Procedure

#### Housing Authority Procedure

All families must report all changes in family and household composition that occur between annual reexaminations (or annual updates).

The Housing Authority will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

### **Addition of New Family Members Not Requiring Housing Authority Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require Housing Authority approval. However, the family is required to promptly notify the Housing Authority of the addition [24 CFR 966.4(a)(1)(v)].

#### Housing Authority Procedure

The family must inform the Housing Authority of the birth, adoption or court-awarded custody of a child within thirty (30) days.

NOTE: See Chapter 3, Eligibility, Section 3.I.J., Guest, for more information regarding the Guest Procedure. The Guest Procedure and the addition of new family members are mutually exclusive.

### **Addition of New Family Members Requiring Housing Authority Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request Housing Authority 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 Housing Authority may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which Housing Authority consent will be given or denied. Under such policies, the factors considered by the Housing Authority 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 Housing Authority's obligation to make reasonable accommodation for disabled persons.

#### Housing Authority Procedure

Families must request Housing Authority 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 fourteen (14) consecutive days or a total of thirty (30) cumulative calendar days during any twelve (12) month period, and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the Housing Authority prior to the individual moving into the unit.

The Housing Authority will not approve the addition of a new family or household member unless the individual meets the Housing Authority's eligibility criteria (see Chapter 3, Eligibility).

A request to allow adult children to move back into the unit will not be approved unless it is determined that the move is essential for the mental or physical well being of the tenant **and** it does not disqualify the family for the size of unit it is currently occupying.

If the Housing Authority determines that an individual does not meet the Housing Authority's eligibility criteria as defined in Chapter 3-Eligibility, the Housing Authority 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 Housing Authority will make its determination within ten (10) business days of receiving all information required to verify the individual's eligibility.

NOTE: See Chapter 3, Eligibility, Section 3.I.-J., Guest for information regarding the Guest Procedure. The Guest Procedure and the addition of new family members are mutually exclusive.

### **Departure of a Family or Household Member**

#### Housing Authority Procedure

If a family member ceases to reside in the unit, the family must inform the Housing Authority within thirty (30) 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 Housing Authority within thirty (30) days.

### **9-III.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because the Housing Authority has reason to believe that changes in income or expenses may have occurred, or because the family reports a change.

#### **Housing Authority-initiated Interim Reexaminations**

Housing Authority-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the Housing Authority.

#### Housing Authority Procedure

The Housing Authority will conduct interim reexaminations in each of the following instances:

1. For families receiving the Earned Income Disallowance (EID), the Housing Authority will conduct an interim reexamination at the start, to adjust the exclusion with any changes in income, and at the conclusion of the second twelve (12) month exclusion period (50 percent Housing Authority phase-in period).
2. If the family has reported zero (\$0) income, the Housing Authority will conduct an interim reexamination every three (3) months as long as the family continues to report that they have no income.

3. If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next twelve (12) months (e.g. seasonal or cyclic income); the Housing Authority may schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.
4. 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 Housing Authority will conduct an interim reexamination.
5. The Housing Authority 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.
6. The Housing Authority will review the EIV Income report for each New Admission (form HUD-50058 action type 1) within ninety (90) days of the participant's admission date to confirm/validate the income reported by the family during the initial eligibility determination. Any income discrepancies will be resolved with the family within thirty (30) days of the date the EIV Income Report was run.

### **Family-Initiated Interim Reexaminations**

The family may request an interim reexamination of family income or composition because of any changes since the last determination. The Housing Authority must make the interim reexamination within a reasonable time after the family request.

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more

information regarding the requirement to impute welfare income see Chapter 6, Income and Rent Determinations.

### Housing Authority Procedure

- Families are required to report all increases in earned income, including new employment, within thirty (30) days of the date the change takes effect. The family must notify the Housing Authority of changes in writing. If the family provides oral notice, the Housing Authority may also require the family to submit the changes in writing.
- The family is required to attend the interim reexamination appointment. Based on the type of change reported, the Housing Authority will determine the documentation the family will be required to submit. The family must submit any required information or documents within ten (10) business days of receiving a request from the Housing Authority. This time frame may be extended for good cause with Housing Authority approval. The Housing Authority will accept required documentation by mail, by fax, or in person.

- If a family reports a change that it was not required to report and that would result in a decrease in the tenant rent, the Housing Authority will conduct an interim reexamination (see Section 9-III.D. for effective dates).
- Families may report changes in income or expenses at any time.

#### **9-III.D. PROCESSING THE INTERIM REEXAMINATION Effective Dates**

The Housing Authority must make the interim reexamination within a reasonable time after the family request [24 CFR 960.257(b)].

##### Housing Authority Procedure

If the family's rent is to *increase*:

- The increase will be effective on the first of the month following a thirty (30) day 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-Program Administration.

If the family's rent is to *decrease*:

The decrease will be effective on the first day of the month following the verification of the reported change.

## **PART IV: RECALCULATING TENANT RENT**

### **9-IV.A. OVERVIEW**

For those families paying income-based rent, the Housing Authority must recalculate the rent amount based on the income information received during the interim 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-Income and Rent Determinations, this part identifies policies that affect these calculations during an interim 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 Housing Authority's utility allowance schedule [24 CFR 960.253(c)(3)]. Chapter 16-Program Administration discusses how utility allowance schedules are established.

##### Housing Authority Procedure

Unless the Housing Authority 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 lease requires the Housing Authority 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 Housing Authority re-determines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the Housing Authority's schedule of Utility Allowances for families in the Housing Authority's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the Housing Authority must notify the tenant that the tenant may ask for an explanation stating the specific grounds of the Housing Authority determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the Housing Authority's grievance procedure [24 CFR 966.4(c)(4)].

#### Housing Authority Procedure

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 Housing Authority may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the Housing Authority may discover errors made by the Housing Authority. When errors resulting in the overpayment or underpayment of rent are discovered, corrections will be made in accordance with the policies in Chapter 15, Program Integrity.

## **Chapter 10 PET OWNERSHIP**

[24 CFR Part 5, Subpart C; 24 CFR 960, Subpart G]

### **INTRODUCTION**

This chapter explains the Housing Authority's policies on the keeping of pets and any criteria or standards pertaining to the policies. The rules adopted are reasonably related to the legitimate interest of the Housing Authority to provide a decent, safe and sanitary living environment for all tenants, and to protect and preserve the physical condition of the property, as well as the financial interest of the Housing Authority.

The chapter is organized as follows:

Part I: Assistance Animals. This part explains the difference between assistance animals and pets and contains policies related to the designation of an assistance animal as well as their care and handling.

Part II: Pet policies for all developments. This part includes pet policies that are common to both elderly/disabled developments and general occupancy developments.

Part III: Pet deposits and fees for elderly/disabled developments. This part contains policies for pet deposits and fees that are applicable to elderly/disabled developments.

Part IV: Pet deposits and fees for general occupancy developments. This part contains policies for pet deposits and fees that are applicable to general occupancy developments.

### **PART I: ASSISTANCE ANIMALS**

[Section 504 of the Rehabilitation Act of 1973; Fair Housing Act (42 U.S.C. 3601-3619);  
24 CFR 5.303]

#### **10-I.A. OVERVIEW**

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:

1. Guiding individuals who are blind or have low vision;
2. Alerting individuals who are deaf or hearing impaired;
3. Providing minimal protection or rescue assistance;
4. Pulling a wheelchair;
5. Fetching items;



6. Alerting persons to impending seizures; or
7. Providing emotional support to persons with disabilities who have a disability-related need for such support.

**Exclusion for Assistance Animals [24 CFR 5.303; 24 CFR 960.705]**

Animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities are not subject to the Housing Authority's pet policies described in Parts II through IV of this chapter. This exclusion applies to animals that reside in projects for the elderly or persons with disabilities, as well as to animals that visit these projects. Nothing in the HUD Regulations:

1. Limits or impairs the rights of persons with disabilities;
2. Authorizes the Housing Authority to limit or impair the rights of persons with disabilities; or
3. Affects any authority the Housing Authority may have to regulate animals that assist, support, or provide service to persons with disabilities, under federal, state, or local law.

Housing Authority Procedure

For an animal to be excluded from the pet Procedure and be considered an assistance animal, there must be a person with disabilities in the household, and the family must request and the Housing Authority approve a reasonable accommodation in accordance with the policies contained in Chapter 2, Fair Housing and Equal Opportunity.

Assistance animals (service animals) are legally defined and recognized (American with Disabilities Act, 1990) by Federal laws, which protect the rights of individuals with disabilities to be accompanied by their service animals in public places. A service animal is not a "pet" – it is any animal that has been trained to assist a person with a disability. A service animal is not subject to a "No Pet" Procedure, a pet deposit, or additional cleaning fees and service animals are ONLY animals that can accompany their handler/owner anywhere without restriction.

Federal laws do not extend the same recognition to Therapy animals, Companion animals, or Emotional Support animals.

**10-I.B. APPROVAL OF ASSISTANCE ANIMALS**

The Housing Authority has the authority to regulate assistance animals under applicable federal, state, and local law [24 CFR 5.303(b)(3); 24 CFR 960.705(b)(3)]. Assistance animals may be allowed on all public housing facilities with no restriction other than those imposed on all tenants to maintain the units and associated facilities in a decent, safe and sanitary manner and to refrain from allowing the assistance animal from disturbing the quiet and peaceful enjoyment of others.

However, 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 need for the assistance animal.

A Housing Authority 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.

A Housing Authority'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*:

1. 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.
2. There is reliable objective evidence that the animal would cause substantial physical damage to the property of others.

### **10-I.C. CARE AND HANDLING**

HUD regulations do not affect any authority a Housing Authority may have to regulate assistance animals under federal, state, and local law [24 CFR 5.303; 24 CFR 960.705].

#### Housing Authority Procedure

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 Housing Authority will consider whether the violation could be reduced or eliminated by a reasonable accommodation. If the Housing Authority determines that no such reasonable accommodation can be made, the Housing Authority may withdraw the approval of a particular assistance animal.

## **PART II: PET POLICIES FOR ALL DEVELOPMENTS**

[24 CFR Part 5, Subpart C; 24 CFR 960, Subpart G]

### **10-II.A. OVERVIEW**

The purpose of a pet Procedure is to establish clear guidelines for ownership of a pet and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of a pet. It also establishes reasonable rules governing the keeping of common household pets. This part contains pet policies that apply to all developments.

### **10-II.B. MANAGEMENT APPROVAL OF PETS**

A resident of a dwelling unit in public housing may own one common household pet or have one common household pet present in the dwelling unit of such resident, subject to the reasonable requirements of the Housing Authority. [24 CFR 960.707]

## **Registration of Pets**

Housing Authority will require the family to register the pet with the Housing Authority [24 CFR 960.707(b)(5)].

### Housing Authority Procedure

- Pet must be registered with the Housing Authority before they are brought onto the premises.
- Registration includes documentation signed by a licensed veterinarian or state/local authority that the pet has received all vaccinations required by state or local law, and that the pet has no communicable disease(s) and is pest-free. This registration must be renewed annually and will be coordinated with the annual reexamination date.
- Pet will not be approved to reside in a unit until completion of the registration requirements.

## **Housing Authority Refusal to Register Pet**

### Housing Authority Procedure

If the Housing Authority refuses to register a pet, a written notification will be sent to the pet owner within ten (10) business days of the Housing Authority's decision. The notice will state the reason for refusing to register the pet and will inform the family of their right to appeal the decision in accordance with the Housing Authority's grievance procedures. The Housing Authority will refuse to register a pet if:

- The pet is not *a common household pet* as defined in Section 10-II.C., Standards for Pets.
- Keeping the pet would violate any pet restrictions listed in this Procedure.
- The pet owner fails to provide complete pet registration information, or fails to update the registration annually.
- The applicant has previously been charged with animal cruelty under state or local law or has been evicted, had to relinquish a pet or been prohibited from future pet ownership due to pet rule violations or a court order.
- The Housing Authority reasonably determines that the pet owner is unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament and behavior may be considered as a factor in determining the pet owner's ability to comply with provisions of the lease.

## **Pet Agreement**

### Housing Authority Procedure

Residents who have been approved to have a pet must enter into a pet agreement with the Housing Authority, or the approval of the pet will be withdrawn.

The pet agreement is the resident's certification that he or she has received a copy of the Housing Authority's pet Procedure and applicable house rules, that he or she has read the policies and/or rules, understands them, and agrees to comply with them.

The resident further certifies by signing the pet agreement that he or she understands that noncompliance with the Housing Authority's pet Procedure and applicable house rules may result in the withdrawal of Housing Authority approval of the pet or termination of tenancy.

**10-II.C. STANDARDS FOR PET [24 CFR 5.318; 960.707(b), 5.306(2)]**

Housing Authority may establish reasonable requirements related to pet ownership including, but not limited to:

1. Limitations on the number of animals in a unit, based on unit size.
2. Prohibitions on types of animals that the Housing Authority classifies as dangerous, provided that such classifications are consistent with applicable state and local law.
3. Prohibitions on individual animals, based on certain factors, including the size and weight of the animal.
4. Requiring pet owners to have their pets spayed or neutered.

Housing Authority may not require pet owners to have any pet's vocal cords removed.

**Definition of "Common Household Pet"**

The pet rules established by a Housing Authority may contain a reasonable definition of a "common household pet" [24 CFR 5.318].

Housing Authority Procedure

*Common household pet* means a domesticated animal, such as a dog, cat, bird, or fish that is traditionally recognized as a companion animal and is kept in the home as pets rather than commercial purposes.

The following animals are not considered common household pets:

- Reptiles
- Rodents
- Insects
- Arachnids
- Wild animals or feral animals
- Pot-bellied pigs
- Animals used for commercial breeding
- Turkeys
- Chickens and/or any other fowl

**Pet Restrictions**

### Housing Authority Procedure

The following animals are **not permitted**:

- Any animal whose adult weight will exceed twenty-five (25) pounds;
- Any dog breed determined to be reserved/aggressive or territorial by Dog Breed info.com or any other credible source. No vicious, aggressive or intimidating animals are to be kept.
- No other type of pet is allowed under any circumstances including, but not limited to, illegal, exotic or endangered animals, snakes, alligators, spiders, lizards;
- Ferrets or other animals whose natural protective mechanisms pose a risk to small children of serious bites or lacerations; or
- Any animal not permitted under state or local law or code.

### **Number of Pets**

#### Housing Authority Procedure

- Residents may own a maximum of two (2) pets.
- In the case of fish, residents may keep no more than can be maintained in a safe and healthy manner in a tank not exceeding ten (10) gallons. Such a tank or aquarium will be counted as one (1) pet.

### **Other Requirements**

#### Housing Authority Procedure

- Dogs and cats must be spayed or neutered at the time of registration or, in the case of underage animals, within thirty (30) days of the pet reaching six (6) months of age.

Exceptions may be made upon veterinary certification that subjecting this particular pet to the procedure would be temporarily or permanently medically unsafe or unnecessary.

- Pets must be licensed in accordance with state or local law. Residents must provide proof of licensing at the time of registration and annually, in conjunction with the resident's annual reexamination.

### **10-II.D. PET RULES**

Pet owners must maintain pets responsibly, in accordance with Housing Authority policies, and in compliance with applicable state and local public health, animal control, and animal cruelty laws and regulations [24 CFR 5.315; 24 CFR 960.707(a)].

### **Pet Area Restrictions**

### Housing Authority Procedure

- Pets must be maintained within the resident's unit. When outside of the unit (within the building or on the grounds) dogs and cats must be kept on a leash or carried and under the control of the resident or other responsible individual at all times.
- Pets other than dogs or cats must be kept in a cage or carrier when outside of the unit.
- Pets are not permitted in common areas including lobbies, community rooms and laundry areas except for those common areas which are entrances to and exits from the building with the exception of service animals.

## **Cleanliness**

### Housing Authority Procedure

- The pet owner shall be responsible for the removal of waste by placing it in a sealed plastic bag and disposing of it in the garbage can.
- The pet owner shall take adequate precautions to eliminate any pet odors within or around the unit and to maintain the unit in a sanitary condition at all times.
- Litter box requirements:
  - Pet owners must promptly dispose of waste from litter boxes and must maintain litter boxes in a sanitary manner.
  - Litter shall not be disposed of by being flushed down the toilet.
  - Litter boxes shall be kept inside the tenant's dwelling unit.

## **Alterations to Unit**

### Housing Authority Procedure

- Pet owners shall not alter their unit, patio, premises or common areas to create an enclosure for any animal.
- Installation of pet doors is prohibited.

## **Noise**

### Housing Authority Procedure

Pet owners must agree to control the noise of pets so that such noise does not constitute a nuisance to other residents or interrupt their peaceful enjoyment of their housing unit or premises. This includes, but is not limited to loud or continuous barking, howling, whining, biting, scratching, chirping, or other such activities.

## **Pet Care**

### Housing Authority Procedure

- Each pet owner shall be responsible for adequate care, nutrition, exercise and medical attention for his/her pet.
- Each pet owner shall be responsible for appropriately training and caring for pet to ensure that the pet is not a nuisance or danger to other tenants and does not damage Housing Authority property.
- No animals may be tethered or chained inside or outside the dwelling unit at any time.

## **Responsible Parties**

### Housing Authority Procedure

- The pet owner will be required to designate two (2) responsible parties for the care of the pet if the health or safety of the pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet.
- Residents are not allowed to watch anyone else's pet unless, without prior notification to the Housing Authority and the resident must sign a statement that they agree to abide by all of the pet rules.
- Resident's guests are not allowed to bring their pets with them to visit.
  - *Except for service animals.*

## **Pets Temporarily on the Premises**

### Housing Authority Procedure

- Pets that are not owned by a tenant are not allowed on the premises. Tenants are prohibited from feeding or harboring stray animals. Guests are not allowed to bring their pets with them to visit.
  - *Except for service animals.*

## **Pet Rule Violations**

### Housing Authority Procedure

- All complaints of cruelty and all dog bites will be referred to animal control or an applicable agency for investigation and enforcement.
- If a determination is made on objective facts supported by written statements, that a resident/pet owner has violated the pet rules, a written lease violation notice will be served. The notice will contain a brief statement of the factual basis for the determination and the pet rule(s) that were violated. The notice will also state:
  - The pet owner has ten (10) business days from the effective date of the service of notice to correct the violation or make written request for a meeting to discuss the violation.

- The pet owner is entitled to be accompanied by another person of his or her choice at the meeting.
- The pet owner's failure to correct the violation, request a meeting, or appear at a requested meeting may result in initiation of procedures to remove the pet, or to terminate the pet owner's tenancy.

## **Notice for Pet Removal**

### Housing Authority Procedure

If the pet owner and the Housing Authority are unable to resolve the violation at the meeting or the pet owner fails to correct the violation in the time period allotted by the Housing Authority, the Housing Authority may serve notice to remove the pet.

The notice will contain:

- A brief statement of the factual basis for the Housing Authority's determination of the pet rule that has been violated.
- The requirement that the resident pet owner must remove the pet within three (3) business days of the notice. Any dog breed determined to be reserved/aggressive or territorial by Dog Breed info.com or any other credible source need to be removed within 24 hours due to safety concerns.
- A statement that failure to remove the pet may result in the initiation of termination of tenancy procedures.

## **Pet Removal**

### Housing Authority Procedure

If the death or incapacitation of the pet owner threatens the health or safety of the pet, or other factors occur that render the owner unable to care for the pet, the situation will be reported to the responsible party designated by the pet owner.

- If the responsible party is unwilling or unable to care for the pet, or if the Housing Authority after reasonable efforts cannot contact the responsible party, the Housing Authority may contact the appropriate state or local agency and request the removal of the pet. Any costs incurred by the Housing Authority will be billed to the family.

## **Termination of Tenancy**

### Housing Authority Procedure

The Housing Authority may initiate procedures for termination of tenancy based on a pet rule violation if:

- The pet owner has failed to remove the pet or correct a pet rule violation within the time period specified; and/or
- The pet rule violation is sufficient to begin procedures to terminate tenancy under



terms of the lease.

## **Emergencies**

### Housing Authority Procedure

The Housing Authority will take all necessary steps to ensure that pets that become vicious, display symptoms of severe illness, or demonstrate behavior that constitutes an immediate threat to the health or safety of others, are immediately removed from the premises by referring the situation to the appropriate state or local entity authorized to remove such animals.

- If it is necessary for the Housing Authority to place the pet in a shelter facility, the cost will be the responsibility of the pet owner.
- If the pet is removed as a result of any aggressive act on the part of the pet, the pet will not be allowed back on the premises.

## **PART III: PET DEPOSITS AND FEES IN ELDERLY/DISABLED DEVELOPMENTS**

### **10-III.A. OVERVIEW**

This part describes the Housing Authority's policies for pet deposits and fees in elderly/disabled developments. Policies governing deposits and fees in family/general occupancy developments are described in Part IV.

### **10-III.B. PET DEPOSITS**

#### **Payment of Deposit [24 CFR 5.318(d)(C); 24 CFR 960.707(d)]**

The Housing Authority may require tenants who own or keep pets in their units to pay a refundable pet deposit. The pet deposit is in addition to any other financial obligation generally imposed on tenants of the project. The pet deposit is not part of the rent payable by the resident.

A Housing Authority that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits, or if there are no such requirements, for rental security deposits, if applicable. The Housing Authority must comply with such laws as to retention of the deposit, interest, and return of the deposit to the resident, and any other applicable requirements.

The maximum amount of pet deposit that may be charged by a Housing Authority on a per dwelling unit basis, is the higher of the total tenant payment (TTP) or such reasonable fixed amount as the Housing Authority may require. The Housing Authority may permit gradual accumulation of the pet deposit by the pet owner.

### Housing Authority Procedure

Elderly or disabled pet owners are required to pay a pet deposit of \$150 in addition to any other required deposits.

#### **Refund of Deposit [24 CFR 5.318(d)(1)]**

The Housing Authority 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 Housing Authority must refund the unused portion of the pet deposit to the tenant within twenty-one (21) days after the tenant moves from the project or no longer owns or keeps a pet in the unit.

Housing Authority Procedure

The Housing Authority will refund the pet deposit to the tenant, less the costs of any damages caused by the pet to the dwelling unit, within twenty- one (21) business days of move-out or removal of the pet from the unit.

The tenant will be billed for any amount that exceeds the pet deposit.

The Housing Authority will provide the tenant with a written list of any charges against the pet deposit within twenty-one (21) business days of the move-out or removal of the pet from the unit. If the tenant disagrees with the amount charged to the pet deposit, the Housing Authority will provide an opportunity to discuss the charges.

**10-III.C. OTHER CHARGES**

**Pet-Related Damages During Occupancy**

Housing Authority Procedure

All reasonable expenses incurred by the Housing Authority as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the tenant, including:

- The cost of repairs and replacements of the tenant's dwelling unit.
- Fumigation of the dwelling unit.
- Repairs to common areas of the public housing development.
- The expense of flea elimination shall also be the responsibility of the resident. If the tenant is in occupancy when such costs occur, the resident shall be billed for such costs.

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 tenant.

**Pet Waste Removal Charge**

Charges for violation of Housing Authority pet rules may be treated like charges for other violations of the lease and Housing Authority tenancy rules.

Housing Authority Procedure

A separate pet waste removal charge of \$25 per occurrence will be assessed against pet owners who fail to remove pet waste in accordance with this Procedure.

The lease shall provide that the charges assessed (other than tenant rent) shall not be due and collectible until fourteen (14) calendar days after the Housing Authority gives written

notice of the charges.

Charges for pet waste removal are not part of rent payable by the resident.

## **PART IV: PET DEPOSITS AND FEES IN FAMILY/GENERAL OCCUPANCY DEVELOPMENTS**

### **10-IV.A. OVERVIEW**

This part describes the Housing Authority's policies for pet deposits and fees for those who reside in family/general occupancy developments.

### **10-IV.B. PET DEPOSITS**

#### **Payment of Deposit [24 CFR 5.318(d); 24 CFR 960.707(d)]**

The Housing Authority may require tenants who own or keep pets in their units to pay a refundable pet deposit. The pet deposit is in addition to any other financial obligation generally imposed on tenants of the project. The pet deposit is not part of the rent payable by the resident.

A Housing Authority that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits, or if there are no such requirements, for rental security deposits, if applicable. The Housing Authority must comply with such laws as to retention of the deposit, interest, and return of the deposit to the resident, and any other applicable requirements.

The maximum amount of pet deposit that may be charged by a Housing Authority on a per dwelling unit basis, is the higher of the total tenant payment (TTP) or such reasonable fixed amount as the Housing Authority may require. The Housing Authority may permit gradual accumulation of the pet deposit by the pet owner.

#### Housing Authority Procedure

Pet owners are required to pay a pet deposit of \$300 in addition to any other required deposits.

#### **Refund of Deposit [24 CFR 5.318(d)(1)]**

The Housing Authority 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 Housing Authority 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.

#### Housing Authority Procedure

The Housing Authority will refund the pet deposit to the tenant, less the costs of any damages caused by the pet to the dwelling unit, within twenty-one (21) days of move-out or removal of the pet from the unit.

The tenant will be billed for any amount that exceeds the pet deposit.

The Housing Authority will provide the tenant with a written list of any charges against the pet deposit within twenty-one (21) business days of the move-out. If the tenant disagrees with the amount charged to the pet deposit, the Housing Authority will provide a meeting

to discuss the charges.

## **10-IV.C. OTHER CHARGES**

### **Pet-Related Damages During Occupancy**

#### Housing Authority Procedure

All reasonable expenses incurred by the Housing Authority as a result of damages directly attributable to the presence of the pet in the development will be the responsibility of the tenant, including:

- The cost of repairs and replacements of the tenant's dwelling unit.
- Fumigation of the dwelling unit.
- Repairs to common areas of the public housing development.
- The expense of flea elimination shall also be the responsibility of the resident. If the tenant is in occupancy when such costs occur, the resident shall be billed for such costs.

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 tenant.

### **Pet Waste Removal Charge**

Charges for violation of Housing Authority pet rules may be treated like charges for other violations of the lease and Housing Authority tenancy rules.

#### Housing Authority Procedure

A separate pet waste removal charge of \$25 per occurrence will be assessed against pet owners who fail to remove pet waste in accordance with this Procedure.

Such charges will be due and payable fourteen (14) calendar days after billing. Charges for pet waste removal are not part of rent payable by the resident.

**Chapter 11**  
**COMMUNITY SERVICE & SELF-SUFFICIENCY REQUIREMENT (CSSR) [24 CFR**  
**960.600-609; PIH Notice 2009-48 (HA)]**

**INTRODUCTION**

This chapter explains HUD regulations requiring Housing Authorities to implement a community service program for all non-exempt adults living in public housing.

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

Part I: Community Service Requirements. This part describes who is subject to the community service requirement, who is exempt, and HUD's definition of economic self-sufficiency.

Part II: Housing Authority Implementation of Community Service. This part provides Housing Authority Procedure regarding Housing Authority implementation and program design.

**PART I: COMMUNITY SERVICE & SELF-SUFFICIENCY REQUIREMENT**

**11-I.A. OVERVIEW**

HUD regulations pertaining to the Community Service and Self-Sufficiency Requirement (CSSR) are contained in 24 CFR 960 Subpart F (960.600 through 960.609). Housing Authorities and residents must comply with the CSSR , effective with Housing Authority fiscal years that commenced on or after October 1, 2000, per 903.7(l)(1)(iii). The Quality Housing and Work Responsibility Act (QHWRA) of 1998 requires that all non-exempt public housing adult residents (18 years of age 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 lease.

**11-I.B. REQUIREMENTS [24 CFR 960.603(a)]**

Each public housing adult resident, who is not exempt, must:

- Contribute eight (8) hours per month of community service; or
- Participate in an economic self-sufficiency program (as defined in the regulations) for eight (8) hours per month; or
- Perform eight (8) hours per month of combined activities (community service and economic self-sufficiency programs).

Housing Authority Procedure

An individual may not skip a month and then double up the following month, unless special circumstances warrant it. The Housing Authority 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 Housing Authority in writing within five (5) business days of the circumstances becoming known. The Housing Authority will review the request and notify the individual, in writing, of its determination within ten (10) business days. The Housing Authority may require those individuals to provide documentation to support their claim.

**Community Service:** 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)].

The Housing Authority may provide, to the extent possible, names and contacts of agencies offering opportunities for residents, including persons with disabilities, to fulfill their community service obligations.

Community service activities include, but are not limited to, serving at:

- Local public or nonprofit institutions, such as schools, Head Start Programs, before- or after-school programs, childcare centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult daycare programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing);
- Nonprofit organizations serving Housing Authority residents or their children, such as: Boy or Girl Scouts, Boys or Girls Club, 4-H Clubs, Police Activities League (PAL), organized children's recreation, mentoring, or education programs, Big Brothers or Big Sisters, Garden Centers, community clean-up programs, or beautification programs;
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, or Meals on Wheels;
- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods or performing arts;
- Housing Authority housing to improve grounds or providing gardens (so long as such work does not alter the Housing Authority's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board, outreach and assistance with Housing Authority-run self-sufficiency activities including supporting computer learning centers; and
- Care for the children of other residents so parents may volunteer.

Pursuant to 24 CFR 960.609, no Housing Authority may substitute community service activity performed by a resident for work ordinarily performed by a Housing Authority employee. However, residents may do community service on Housing Authority property or with or through Housing Authority programs to assist with or enhance work done by a

Housing Authority employee.

**NOTE:** Political activity is excluded.

**Exempt Individual [24 CFR 960.601(b)]**

Exemptions for adult residents unable to participate include person who are:

1. 62 years or older;
2. Is blind or disabled I, as defined under section 216(i)(I) or 1614 of the Social Security Act (42 U.S.C. Section 416 (i)(1); Section 1382c), and who certify that:
  - Because of this disability she or he is unable to comply with the service provisions of this subpart, or
  - is a primary caretaker of such an individual;
3. Engaged in work activities (See eligible work activities)

**Work Activities [42 U.S.C. 607(d)]**

A resident must be "engaged in work activities" in order to be exempt from the Community Service and Self-Sufficiency Requirement (CSSR). The person must be participating in an activity that meets one of the following definitions of "work activity" contained in Section 407(d) of the Social Security Act (42 U.S.C. Section 607(d)):

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
  - On-the-job training;
  - Job search;
  - Community service programs;
- Vocational educational training (not to exceed twelve (12) months with respect to any individual);
- Job skills training directly related to employment;
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

Satisfactory attendance at secondary school or in a course of study leading to a certificate

of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate;

#### Housing Authority Procedure

The Housing Authority will consider thirty (30) hours per week as the minimum number of hours needed to qualify for a work activity exemption.

Able to meet requirements under a State program funded under part A of Title IV of the Social Security Act (42 U.S.C. Section 601 et seq.) or under any other welfare program of the State in which the Housing Authority is located including a State-administered Welfare-to-Work program; or

A member of a family receiving assistance, benefits, or services under a State program funded under part A of Title IV of the Social Security Act (42 U.S.C. Section 601 et seq.), or under any other welfare program of the State in which the Housing Authority is located, including a State-administered Welfare-to-Work program, and has not been found by the State or other administering entity to be in noncompliance with such a program.

#### **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 HUD-assisted families or to provide work for such families. Eligible self-sufficiency activities include, but are not limited to:

- Job readiness programs or job training while not employed
- Training programs through local One-Stop Career Centers, Workforce Investment Boards (local entities administered through the U.S. Department of Labor), or other training providers
  - Higher Education (junior college or college)
  - Apprenticeships (formal or informal)
  - Substance abuse or mental health counseling
  - Reading, financial, and/or computer literacy classes
  - English as a second language and/or English proficiency classes
  - Budgeting and credit counseling

#### **Notification Requirements [24 CFR 960.605(c)(2)] [Notice PIH 2015-12]**

The Housing Authority must give each family a written description of the community service requirement, the process for claiming status as an exempt person, and the process for Housing Authority verification of exempt status. The Housing Authority must also notify the family of its determination identifying the family members who are subject to the service requirement, and the family members who are exempt. In addition, the family must sign a certification that they have received and read the Procedure and understand that failure



to comply with the Community Service Requirement will result in non-renewal of the lease.

#### Housing Authority Procedure

The Housing Authority will provide the family with a copy of the Housing Authority's Community Service Procedure at lease-up, annual update, when a family member is determined to be subject to the community service requirement during the lease term, and at any time upon the family's request.

On an annual basis, at the time of lease renewal, the Housing Authority will notify the family in writing of the family members who are subject to the community service requirement and the family members who are exempt. If the family includes non-exempt individuals, the notice will include a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which they may record the activities they perform and the number of hours contributed. The form will also have a place for a signature by an appropriate official, who will certify to the activities and hours completed.

#### **11-I.C. DETERMINATION OF EXEMPTION STATUS AND COMPLIANCE [24 CFR 960.605(c)(3)]**

The Housing Authority must review the exempt and non-exempt status of each family member and verify family compliance with the CSSR annually at least thirty (30) days before the end of the twelve (12) month lease term. The Procedure for documentation and verification of compliance with service requirements may be found in Section 11-I.D., Documentation and Verification of this chapter.

#### **Annual Determination**

##### ***Determination of Exemption Status***

An exempt individual is excused from the community service requirement [24 CFR 960.603(a)].

#### Housing Authority Procedure

At least sixty (60) days prior to lease renewal, the Housing Authority will review and verify the exemption status of all adult family members. This verification will only be done on an annual basis unless the family reports a change or the Housing Authority has reason to believe that an individual's exemption status has changed. For individuals who are exempt because they are 62 years of age and older, verification of exemption status will be done only at the initial examination.

Upon completion of the verification process, the Housing Authority will notify the family of its determination in accordance with the Procedure in Section 11-I.B., Notification Requirements of this chapter.

#### **Determination of Compliance**

The Housing Authority must review resident family compliance with service requirements annually at least thirty (30) days before the end of the twelve (12) month lease term [24 CFR 960.605(c)(3)]. As part of this review, the Housing Authority must verify that any family member that is not exempt from the community service requirement has met his or her service obligation.

### Housing Authority Procedure

At least one hundred twenty (120) days prior to the end of the lease term, the Housing Authority will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement. The family will have ten (10) business days to submit the Housing Authority required documentation form(s).

If the family fails to submit the required documentation within the required timeframe, or Housing Authority approved extension, the subject family members will be considered noncompliant with community service requirements, and notices of noncompliance will be issued pursuant to the policies in Section 11.I.E. (Noncompliance) of this chapter.

## **Change in Status Between Annual Determinations**

### Housing Authority Procedure

Changing from Exempt to Non-Exempt Status:

- If an exempt individual becomes non-exempt during the twelve (12) month lease term, it is the family's responsibility to report this change to the Housing Authority within thirty (30) days.
- Within ten (10) business days of a family reporting such a change, or the Housing Authority determining such a change is necessary, the Housing Authority will provide written notice of the effective date of the requirement, a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which the family member may record the activities performed and number of hours contributed.
- The effective date of the community service requirement will be the first of the month following thirty (30) day notice.
- Changing from Non-Exempt to Exempt Status:
  - If a non-exempt person becomes exempt during the twelve (12) month lease term, it is the family's responsibility to report this change to the Housing Authority within thirty (30) days. Any claim of exemption will be verified by the Housing Authority in accordance with the Procedure at 11-I.D., Documentation and Verification of Exemption Status.
  - Within ten (10) business days of a family reporting such a change, or the Housing Authority determining such a change is necessary, the Housing Authority will provide the family written notice that the family member is no longer subject to the community service requirement, if the Housing Authority is able to verify the exemption.
  - The exemption will be effective immediately.

## **11-I.D. DOCUMENTATION AND VERIFICATION [24 CFR 960.605(c)(4)] [Notice PIH 2009-48]**

The Housing Authority must retain reasonable documentation of service requirement performance or exemption in participant files. At each regularly scheduled reexamination, each non-exempt family member must present a signed standardized form developed by the Housing Authority of community service and self-sufficiency activities performed over the last twelve (12) months.

### **Documentation and Verification of Exemption Status**

#### Housing Authority Procedure

All family members who claim they are exempt from the community service requirement will be required to sign the Housing Authority's Community Service Exemption Certification form. The Housing Authority may provide a completed copy to the family and will keep a copy in the tenant file.

The Housing Authority will verify that an individual is exempt from the community service requirement by following the verification hierarchy and documentation requirements in Chapter 7-Verification.

The Housing Authority makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with the Housing Authority's determination, a dispute can be filed through the Housing Authority's grievance procedures (see Chapter 14-Grievances and Appeals).

### **Documentation and Verification of Compliance**

If qualifying community service activities are administered by an organization other than the Housing Authority, a family member who is required to fulfill a service requirement must provide certification to the Housing Authority, signed by the organization, that the family member has performed the qualifying activities [24 CFR 960.607].

#### Housing Authority Procedure

If anyone in the family is subject to the community service requirement, the Housing Authority will provide the family with the appropriate documentation forms at admission, at lease renewal, when a family member becomes subject to the community service requirement during the lease term, or upon request by the family.

Each individual who is subject to the requirement will be required to record their community service or self-sufficiency activities and the number of hours contributed on the required form. The certification form will also include places for signatures and phone numbers of supervisors, instructors, and counselors certifying to the number of hours contributed.

Families will be required to submit the documentation to the Housing Authority, upon request by the Housing Authority.

If the Housing Authority has reasonable cause to believe that the certification provided by the family is false or fraudulent, the Housing Authority has the right to require third-party verification.

### **Nondiscrimination and Equal Opportunity Compliance**

In administering community service requirements, the Housing Authority must comply with nondiscrimination and equal opportunity requirements listed at §5.105(a) of this file [24 CFR 960.605(c)(5)].

### **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 non-renewal of the lease at the end of the twelve (12) month lease term, but not for termination of tenancy during the course of the twelve (12) month lease term [24 CFR 960.603(b)].

If the tenant or another family member has violated the community service requirement, the Housing Authority may not renew the lease upon expiration of the twelve (12) month term of the lease, unless the tenant and any other noncompliant family member enter into a workout agreement with the Housing Authority. 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 (12) 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)].

### **Notice of Initial Noncompliance [24 CFR 960.607(f)]**

If the Housing Authority determines that there is a family member who is required to fulfill a service requirement, but who has failed to comply with this obligation (noncompliant resident), the Housing Authority must notify the tenant of this determination.

The notice to the tenant must:

- Briefly describe the noncompliance.
  
- The notice must state that the Housing Authority will not renew the lease at the end of the twelve (12) month lease term unless the tenant, and any other noncompliant resident, enter into a written agreement with the Housing Authority to cure the noncompliance, or the family provides written assurance satisfactory to the Housing Authority that the tenant or other noncompliant resident no longer resides in the unit.

The notice must also state that the tenant may request a grievance hearing on the Housing Authority's determination, in accordance with the Housing Authority's grievance procedures, and that the tenant may exercise any available judicial remedy to seek timely redress for the Housing Authority's non-renewal of the lease because of the Housing Authority's determination.

### Housing Authority Procedure

The notice of initial noncompliance may be sent at least forty-five (45) days prior to the end of the lease term.

The family will have ten (10) business days from the date of the notice of noncompliance to enter into a written agreement to cure the noncompliance over the twelve (12) month term of the new lease, provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before the Housing Authority will agree to continue occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the family member that previously resided with them.

If the family does not request a grievance hearing, or does not take either corrective action required by the notice of noncompliance within the required ten (10) business day timeframe, the Housing Authority will terminate tenancy in accordance with the policies in Chapter 13-Lease Terminations.

### **Continued Noncompliance [24 CFR 960.607(b)]**

If, after the twelve (12) month cure period, the family member is still not compliant, the Housing Authority must terminate tenancy of the entire family, according to the Housing Authority's lease, unless the family provides documentation that the noncompliant resident no longer resides in the unit.

### Housing Authority Procedure

Notices of continued noncompliance will be sent at least thirty (30) days prior to the end of the lease term and will also serve as the family's termination notice. The notice will meet the requirements for termination notices described in Chapter 13-Lease Terminations.

The family will have ten (10) business days from the date of the notice of non-compliance to provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before the Housing Authority will agree to continued occupancy of the family.

Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the noncompliant family member that previously resided with them.

If the family does not request a grievance hearing, or provide such documentation within the required ten (10) business day timeframe, the family's lease and tenancy will automatically terminate at the end of the current lease term without further notice.

### **Enforcement Documentation [Notice PIH 2015-12]**

Should a family member refuse to sign a written work-out agreement, or fail to comply with the terms of the work-out agreement, Housing Authorities are required to initiate

termination of the tenancy proceedings at the end of the current 12-month lease (see 24 CFR 966.53(c) due to the fact that the family is failing to comply with lease requirements.

When initiating due process, the Housing Authority must take the following procedural safeguards:

- Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction.
- Right of the tenant to be represented by counsel.
- Opportunity for the tenant to refute the evidence presented by the Housing Authority, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense, which the tenant may have.
- A decision on merits.

## **PART II: IMPLEMENTATION OF COMMUNITY SERVICE**

### **11-II.A. OVERVIEW**

Each Housing Authority must develop a Procedure for administration of the community service and economic self-sufficiency requirements for public housing. It is in the Housing Authority's best interest to develop a viable, effective community service program, to provide residents the opportunity to engage in the community and to develop competencies.

#### **Implementation of Community Service**

The Housing Authority may not substitute any community service or self-sufficiency activities performed by residents for work ordinarily performed by Housing Authority employees, or replace a job at any location where residents perform activities to satisfy the service requirement [24 CFR 960.609].

### **EXHIBIT 11-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(I) and Section 1614(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 twelve (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 1614 (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 (12) months.

## Chapter 12 TRANSFER PROCEDURE

### INTRODUCTION

This chapter explains the Housing Authority's transfer Procedure, based on HUD regulations, HUD guidance, and Housing Authority Procedure decisions.

The Housing Authority may require the tenant to move from the unit under certain circumstances. There are also emergency circumstances under which alternate accommodations for the tenant must be provided, that may or may not require a transfer.

The tenant may also request a transfer, such as a request for a new unit as an accommodation. The Housing Authority must have specific policies in place to deal with acceptable transfer requests.

This chapter describes HUD regulations and Housing Authority policies related to transfers in four parts:

Part I: Emergency Transfers. This part describes emergency transfers, emergency transfer procedures, and payment of transfer costs.

Part II: Housing Authority Required Transfers. This part describes types of transfers that may be required by the Housing Authority, notice requirements, and payment of transfer costs.

Part III: Transfers Requested by Residents. This part describes types of transfers that may be requested by residents, eligibility requirements, security deposits, payment of transfer costs, and handling of transfer requests.

Part IV: Transfer Processing. This part describes creating a waiting list, prioritizing transfer requests, the unit offer Procedure, examples of good cause, deconcentration, transferring to another development and reexamination.

### PART I: EMERGENCY TRANSFERS

#### 12-I.A. OVERVIEW

HUD categorizes certain actions as emergency transfers. The emergency transfer differs from a typical transfer in that it requires immediate action by the Housing Authority.

In the case of a genuine emergency, it may be unlikely that the Housing Authority 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 Housing Authority 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 Housing Authority must offer standard alternative accommodations, if available, where necessary repairs cannot be



made within a reasonable time [24 CFR 966.4(h)(3)]. The Housing Authority also allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit.

#### Housing Authority Procedure

The following is considered an emergency circumstance warranting an immediate transfer of the tenant or family:

- Maintenance conditions in the resident's unit, building or at the site that pose an immediate, verifiable threat to the life, health or safety of the resident or family members that cannot be repaired or abated within twenty-four (24) hours. Examples of such unit or building conditions would include: a gas leak; no heat in the building during the winter; no water; toxic contamination; sewage problems and serious water leaks.
- A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer, if:
  - the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit.
  - the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.
- A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.
- Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

### **12-I.C. EMERGENCY TRANSFER PROCEDURES**

#### Housing Authority Procedure

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, the Housing Authority will provide temporary accommodations to the tenant by arranging for temporary lodging at a hotel or a similar dwelling type. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, the Housing Authority will transfer the resident to the first available and appropriate unit after the temporary relocation. Emergency transfers are mandatory for the tenant.

To request an emergency transfer under VAWA, the tenant shall notify the Housing Authority management office and submit a written request for a transfer (Form HUD-5383). The Housing Authority will provide reasonable accommodations to this procedure for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

- A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under the Housing Authority program; OR
- A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

### **Confidentiality**

The Housing Authority will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the Housing Authority written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant.

### **Emergency Transfer Timing and Availability**

The Housing Authority cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The Housing Authority will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The Housing Authority may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If the Housing Authority has no safe and available units for which a tenant who needs an emergency is eligible, the Housing Authority will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, the Housing Authority will also assist tenant in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

The covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must be reported to HUD annually.

### **Safety and Security of Tenants**

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact:

- The National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call:

- The Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may:

- Visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

## **PART II: HOUSING AUTHORITY REQUIRED TRANSFERS**

## **12-II.A. OVERVIEW**

The Housing Authority may require that a resident transfer to another unit under certain circumstances. For example, the Housing Authority may require a resident to transfer to make an accessible unit available to a disabled family. The Housing Authority may also transfer a resident in order to maintain occupancy standards based on family composition. Finally, a Housing Authority may transfer residents in order to demolish or renovate the unit.

A transfer that is required by the Housing Authority is an adverse action, and is subject to the notice requirements for adverse actions [24 CFR 966.4(e)(8)(i)].

If the household transfers to another dwelling unit, the lease shall terminate and a new written lease agreement shall be executed for the new dwelling unit. By transferring resident to another dwelling unit, however, the Housing Authority shall not waive its right to terminate the lease for that new unit or to evict the household from that new unit based upon conduct that occurred before the transfer (when resident resided at the previous residence to which the lease refers).

## **12-II.B. TYPES OF HOUSING AUTHORITY REQUIRED TRANSFERS**

### Housing Authority Procedure

The types of transfers that may be required by the Housing Authority, 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 Housing Authority 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 Housing Authority may require the family to agree to move to a non-accessible unit when it becomes available [24 CFR 8.27(b)].

### Housing Authority Procedure

When a non-accessible unit becomes available, the Housing Authority 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 Housing Authority 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.

Families required to transfer to make an accessible unit available will have three (3) calendar days in which to turn in the keys to the previous unit. Tenants failing to turn in the keys in the required time frame will be served a notice of termination. Tenant will be responsible for all charges (i.e. damages, rent for both units, etc.).

## **Occupancy Standards Transfers**

The Housing Authority 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 Housing Authority Procedure [24 CFR 960.257(a)(4)]. On some occasions, the Housing Authority may initially place a resident in an inappropriately sized unit at lease-up, where the family is over-housed, to prevent vacancies. The lease must include the tenant's agreement to transfer to an appropriately sized unit based on family composition [24 CFR 966.4(c)(3)].

### Housing Authority Procedure

The Housing Authority 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 Procedure, 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 Chapter 5-Occupancy Standards and Unit Offers, Section 5-I.B, Determining Unit Size.

*Over-housed:* The family no longer qualifies for the bedroom size in which they are living based on the Housing Authority's occupancy standards as described in Chapter 5-Occupancy Standards and Unit Offers, Section 5-I.B, Determining Unit Size.

The Housing Authority 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 Housing Authority's occupancy standards, when the Housing Authority determines there is a need for the transfer.

The Housing Authority 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 Housing Authority 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 Chapter 5-Occupancy Standards and Unit Offers, Chapter 5-I.C, Exception to Occupancy Standards will only be required to transfer if it is necessary to comply with the approved exception.

Families required to transfer for occupancy standards will have three (3) calendar days in which to turn in the keys to the previous unit. Tenants failing to turn in the keys in the required time frame will be served a notice of termination. Tenant will be responsible for all charges (i.e. damages, rent for both units, etc.).

## **Demolition, Disposition, Revitalizations, or Rehabilitation Transfers**

These transfers permit the Housing Authority to demolish, sell or do major capital or rehabilitation work at a building site.

### Housing Authority Procedure

The Housing Authority 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 Housing Authority's relocation plan may require transferring affected families to other available public housing units at any public housing site.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list and receive priority.

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 Housing Authority 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 Housing Authority may not take action on the transfer until the conclusion of the grievance process.

## **PART III: TRANSFERS REQUESTED BY TENANTS**

### **12-III.A. OVERVIEW**

HUD provides the Housing Authority with discretion to consider transfer requests from tenants. The only requests that the Housing Authority is required to consider are requests for reasonable accommodation and emergency transfers for VAWA. All other transfer requests are at the discretion of the Housing Authority. To avoid administrative costs and burdens, this Procedure limits the types of requests that will be considered by the Housing Authority.

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**

#### Housing Authority Procedure

Transfers requested by the tenant are considered optional for the tenant.

The types of requests for transfers that the Housing Authority will consider are limited to requests for transfers to alleviate a serious or life threatening medical condition, transfers due to a threat of physical harm or criminal activity, reasonable accommodation, transfers to a different unit size as long as the family qualifies for the unit according to the Housing Authority's occupancy standards, and transfers to a location closer to employment. The tenant must provide a request for transfer in writing that includes third-party verification, which verifies the reason for the request. No other transfer requests will be considered by the Housing Authority.

The Housing Authority will consider the following as high priority transfer requests:

- When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature.
- When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at the Housing Authority's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, a hate crime, or domestic violence, dating violence, sexual assault, or stalking.
- When a family requests a transfer as a reasonable accommodation. Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first floor unit for a person with mobility impairment, or a transfer to a unit with accessible features.

The Housing Authority will consider the following as regular priority transfer requests:

- When a family requests a larger bedroom size unit even though the family does not meet the Housing Authority's definition of overcrowded, as long as the family meets the Housing Authority's occupancy standards for the requested size unit.
- When the head of household or spouse is employed twenty-five (25) miles or more from the public housing unit, has no reliable transportation, and public transportation is not adequate.

### **12-III.C. ELIGIBILITY FOR TRANSFER**

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, the Housing Authority may establish other standards for considering a transfer request.

#### Housing Authority Procedure

Except where reasonable accommodation is being requested, the Housing Authority will only consider transfer requests from residents that meet the following requirements:

- Have not engaged in criminal activity that threatens the health and safety of residents and staff.
- Owe no back rent or other charges, or have a pattern of late payment.
- Have no housekeeping lease violations or history of damaging property.
- Can get utilities turned on in the name of the head of household.

Exceptions to the good record requirement may be made when it is to the Housing Authority's advantage to make the transfer.

If a family requested to be placed on the transfer list for a unit size smaller than designated by the occupancy guidelines, the family will not be eligible to transfer to a larger size unit

for a period of two years from the date of admission, unless they have a change in family size or composition, or it is needed as a reasonable accommodation.

#### **12-III.D. SECURITY DEPOSITS**

##### Housing Authority Procedure

When a family transfers from one unit to another, the Housing Authority 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 and if applicable any increases in the security deposit for the "new" unit.

#### **12-III.E. COST OF TRANSFER**

##### Housing Authority Procedure

The resident will bear all of the costs of transfer requests. However, in cases of documented financial hardship, the Housing Authority will consider assuming the transfer costs when the transfer is done as a reasonable accommodation.

#### **12-III.F. HANDLING OF REQUESTS**

##### Housing Authority Procedure

Residents requesting a transfer to another unit or development will be required to submit a written request for transfer.

In the case of a reasonable accommodation transfer, the Housing Authority will require the resident to make the request in writing using a reasonable accommodation request form.

However, the Housing Authority may consider the transfer request any time the resident indicates that a reasonable accommodation is needed whether or not a formal written request is submitted.

The Housing Authority will respond by approving the transfer and placing 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., of this chapter, the Asset Manager will address the problem and until resolved, the request for transfer will be denied.

The Housing Authority will respond within ten (10) business days of the submission of the family's request. If the Housing Authority 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**

### Housing Authority Procedure

The Housing Authority will maintain a site-based list to ensure that transfers are processed in the correct order and that procedures are uniform.

Emergency transfers will not automatically go on the transfer list. Instead emergency transfers will be handled immediately, on a case-by-case basis. If the emergency will not be finally resolved by a temporary accommodation, and the resident requires a permanent transfer, that transfer will be placed at the top of the transfer list.

Emergency transfers or transfers to make an accessible unit available for a family or a family member with a physical disability will take precedent over the transfers listed in Category 1 and Category 2 below. Other than Category 1 Transfers, all other transfers will take place at a rate of approximately one (1) after every ten (10) new admissions from the waiting list.

Emergency Transfers are for requests submitted for VAWA or maintenance conditions in the resident's unit, building or at the site that pose an immediate, verifiable threat to the life, health or safety of the resident or family members that cannot be repaired or abated within twenty-four (24) hours. Examples of such unit or building conditions would include: a gas leak; no heat in the building during the winter; no water; toxic contamination; sewage problems and serious water leaks.

#### Category 1 Transfers

1. Verified medical condition
2. Threat of harm or criminal activity
3. Reasonable accommodation
4. Demolition, renovation, etc.

#### Category 2 Transfers

1. Occupancy Standards
2. Other Housing Authority required transfers
3. Other tenant requested transfers

Within each category, transfers will be processed in order of the date the family was placed on the transfer list, starting with the earliest date.

Category 1 Transfers include mandatory transfers to remove residents who are witnesses to crimes and may face reprisals; provide housing options to residents who are victims of hate crimes or extreme harassment; alleviate verified medical problems of a serious (but not life-threatening) nature; or permit modernization or demolition of units.

These transfers shall take priority over new admissions.

Category 2 Transfers correct serious occupancy standards problems. Transfers will be considered Category 2 transfers only if the family size is so small that that includes fewer persons than the number of bedrooms, or so large that the household members over the age of 6 would equal more than two persons per bedroom.

## **12-IV.C. TRANSFER OFFER PROCEDURE**

### Housing Authority Procedure



Residents will receive one offer of a transfer.

When the transfer is required by the Housing Authority, 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 (6) months to reapply for another transfer.

#### **12-IV.D. GOOD CAUSE FOR UNIT REFUSAL**

##### Housing Authority Procedure

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 Housing Authority'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 an 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 thirty (30) day notice to move.

The Housing Authority will require verifiable third-party documentation of good cause for unit refusals.

#### **12-IV.E. DECONCENTRATION**

##### Housing Authority Procedure

If subject to deconcentration requirements, the Housing Authority 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 Housing Authority'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**

### Housing Authority Procedure

The reexamination date will not be changed to the first of the month in which the transfer took place.

**Chapter 13**  
**LEASE TERMINATIONS**  
**24 CFR 966.4**

**INTRODUCTION**

Either party in a lease agreement may terminate the lease under certain circumstances. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program, to assure that qualified families are provided decent, safe, and sanitary housing. The Housing Authority may terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations specify some reasons for which a Housing Authority can terminate a family's lease, and give the Housing Authority the right to determine other reasons.

When determining Housing Authority Procedure on terminations, state and local landlord-tenant laws must be considered, since such laws could vary from one location to another. These variances may be either more or less restrictive than federal law or HUD regulations.

This chapter presents the policies that govern both the family's and Housing Authority's termination of the lease. It is presented in four parts:

Part I: Termination by Tenant. This part discusses the family's voluntary termination of the lease and the requirements the Housing Authority places upon families who wish to terminate their lease.

Part II: Termination by Housing Authority - Mandatory. This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by the Housing Authority occurs. This part also includes non-renewal of the lease for noncompliance with community service requirements.

Part III: Termination by Housing Authority – Other Authorized Reasons. This part describes the Housing Authority's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes Housing Authorities to terminate. For some of these options HUD requires the Housing Authority to establish policies and lease provisions for termination, but termination is not mandatory. For other options the Housing Authority has full discretion whether to consider the options as just cause to terminate as long as the Housing Authority policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the Housing Authority may consider in lieu of termination, and the criteria the Housing Authority will use when deciding what actions to take.

Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and Housing Authority policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also describes record keeping related to lease termination.

## **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 rental office or the Housing Authority Administration office or sent properly addressed by pre-paid first-class mail.

#### Housing Authority Procedure

If a family desires to move and terminate their tenancy with the Housing Authority, they must give at least thirty (30) calendar days advance written notice in accordance with state and local laws to the Housing Authority of their intent to vacate.

If a family must give less than thirty (30) days notice due to circumstances beyond their control, the Housing Authority at its discretion, may waive the thirty (30) day requirement.

The notice of lease termination must be signed by the head of household, spouse, or co-head.

## **PART II: TERMINATION BY THE HOUSING AUTHORITY – MANDATORY**

### **13-II.A. OVERVIEW**

HUD requires the Housing Authority to terminate the lease in certain circumstances. In other circumstances HUD requires the Housing Authority to establish provisions for lease termination, but it is still a Housing Authority 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 Housing Authority has no such option.** In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the Housing Authority to terminate the lease.

### **13-II.B. FAILURE TO SUPPLY INFORMATION AND/OR PROVIDE CONSENT [24 CFR 960.259(a) and (b)]**

The Housing Authority **must** terminate the lease if any family member fails to sign and submit any consent form required for any reexamination. See Chapter 7, Verification for a complete description of consent requirements.

### **13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]**

The family must supply any required evidence of citizenship or eligible immigration status. The Housing Authority must terminate the lease upon the occurrence of any of the following

events:

1. Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified by the Housing Authority or by the expiration of any extension granted by the Housing Authority;
2. Evidence of citizenship and eligible immigration status is timely submitted, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of a family member, and
  - i. The family does not pursue USCIS appeal or informal hearing rights as provided in this section; or
  - ii. USCIS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or
3. The Housing Authority determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

See Chapter 7-Verification for a complete description of documentation requirements.

**13-II.D. FAILURE TO PROVIDE SOCIAL SECURITY DOCUMENTATION [24 CFR 5.218(c) and 24 CFR 960.259(a)(3)], [Notice PIH 2012-10]**

The Housing Authority must terminate assistance if a participant family fails to disclose the complete and accurate Social Security Numbers (SSN) of each household member and the documentation necessary to verify each SSN.

However, if the family is otherwise eligible for continued program assistance, and the Housing Authority determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the Housing Authority may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed ninety (90) calendar days from the date the Housing Authority determined the family to be noncompliant.

Housing Authority Procedure

The Housing Authority will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of ninety (90) calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the Social Security Administration (SSA), natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

See Chapter 7, Verification, for more information on documentation and certification requirements.

**13-II.E. FAILURE TO ACCEPT THE HOUSING AUTHORITY'S OFFER OF A LEASE REVISION [24 CFR 966.4(I)(2)(iii)(E)]**

The Housing Authority must terminate the lease if the family fails to accept the Housing Authority's offer of a lease revision to an existing lease:

1. That is on a form adopted by the Housing Authority in accordance with 24 CFR 966.3;
2. With written notice of the offer of the revision at least sixty (60) calendar days before the lease revision is scheduled to take effect; and
3. With the offer specifying a reasonable time limit within that period for acceptance by the family.

See Chapter 8, Leasing and Inspections for information pertaining to Housing Authority policies for offering lease revisions.

**13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(I)(5)(i)(A)]**

The Housing Authority must immediately terminate the lease if the Housing Authority determines that any member of the household has ever been convicted of drug-related criminal activity for 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(I)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]**

The Housing Authority is prohibited from renewing the lease at the end of the twelve (12) month period of the lease term when the family fails to comply with the community service requirements as described in Chapter 11-Community Service.

**13-II.H. DEATH OF A SOLE FAMILY MEMBER HOUSEHOLD [Notice PIH 2012-4]**

Once the Housing Authority has confirmed the death of the Head of Household (HOH) of a single member household or a household where the surviving household member is a live-in aide, the Housing Authority is required to complete and successfully submit a form HUD-50058 with the following:

- Line 2a-Type of Action = 6 (End of Participation (EOP))
- Line 2b-Effective Date of Action = Date of Death from Deceased Tenants Report, or as noted below. (If date is listed as "N/A", enter the date of death as confirmed by Obituary, Death Record, or information as obtained or as noted below.)
  - The Housing Authority is required to list the EOP date as:
  - The date on which the family or designee of the deceased tenant's estate turned in the keys and signed a vacate notice; or
  - The date the public housing lease was terminated; or

- The date the Housing Authority legally regained possession of the unit, whichever occurs first.

### **Public Housing Deceased Single Member Households with Unauthorized Occupants in Possession of the Public Housing Unit.**

Public Housing staff will conduct a home visit to determine if anyone is residing in the unit. If there are unauthorized persons (including a live-in aide) in the unit of a deceased single member household, the Housing Authority must pursue judicial intervention to have them lawfully removed from the unit.

To remove the deceased HOH from the Deceased Tenants Report in which there is pending litigation to regain possession of the public housing unit, the Housing Authority is required to complete and successfully submit an interim form HUD-50058 to PIC as outlined in PIH Notice 2012-4 or any succeeding PIH Notice.

## **PART III: TERMINATION BY THE HOUSING AUTHORITY – OTHER AUTHORIZED REASONS**

### **13-III.A. OVERVIEW**

Besides requiring the Housing Authority to terminate the lease under the circumstances described in Part II of this chapter, HUD requires the Housing Authority 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 Housing Authorities to terminate for such violations in all cases. In addition, the Housing Authority may consider alternatives to termination.

The Housing Authority 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 Housing Authority may, as an alternative to termination, require the exclusion of the culpable household member.

In addition, HUD authorizes the Housing Authority 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. In the development of the terms of the lease, the Housing Authority must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes.

The Housing Authority, with some restrictions, also has the option to terminate the tenancies of families who are over income.

### **13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(I)]**

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations.

### **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.

*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 Housing Authority-approved live-in aide.

*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.

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

**Drug Crime On or Off the Premises [24 CFR 966.4(I)(5)(i)(B)]**

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

Housing Authority Procedure

The Housing Authority will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in or on the premises by any other person under the tenant's control.

1. The Housing Authority will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.
2. In making its decision to terminate the lease, the Housing Authority will consider alternatives as described in Section 13-III.D of this chapter as well as other factors as described in Section 13-III.E of this chapter.



### **Illegal Use of a Drug [24 CFR 966.4(I)(5)(i)(B)]**

The lease must provide that the Housing Authority may evict a family when the Housing Authority determines that a household member is illegally using a drug or when the Housing Authority determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

#### Housing Authority Procedure

The Housing Authority will terminate the lease when the Housing Authority determines that a household member is illegally using a drug or the Housing Authority determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

1. A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six (6) months.
2. The Housing Authority 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.
3. In making its decision to terminate the lease, the Housing Authority will consider alternatives as described in Section 13-III.D of this chapter as well as other factors as described in Section 13-III.E of this chapter.

### **Threat to Other Residents [24 CFR 966.4(I)(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 Housing Authority management staff residing on the premises) or by persons residing in the immediate vicinity of the premises are grounds for termination of tenancy.

#### Housing Authority Procedure

The Housing Authority 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 Housing Authority management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

1. *Immediate vicinity* means within a three-block radius of the premises.
2. The Housing Authority will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.
3. In making its decision to terminate the lease, the Housing Authority will consider alternatives as described in Section 13-III.D of this chapter as well as other factors as described in Section 13-III.E of this chapter.

### **Alcohol Abuse [24 CFR 966.4(I)(5)(vi)(A)]**

Housing Authorities must establish standards that allow termination of tenancy if the Housing Authority 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.

#### Housing Authority Procedure

The Housing Authority will terminate the lease if the Housing Authority 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.

1. A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six (6) months.
2. The Housing Authority 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 Housing Authority will consider alternatives as described in Section 13-III.D of this chapter as well as other factors as described in Section 13-III.E of this chapter.

#### **Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(I)(5)(vi)(B)]**

Housing Authorities must establish standards that allow termination of tenancy if the Housing Authority 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.

#### Housing Authority Procedure

The Housing Authority will terminate the lease if the Housing Authority 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.

1. The Housing Authority 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.
2. In making its decision to terminate the lease, the Housing Authority will consider alternatives as described in Section 13-III.D of this chapter as well as other factors as described in Section 13-III.E of this chapter.

#### **Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(I)(2)(i) and 24 CFR 966.4(f)]**

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations, and grounds for termination. The Housing Authority may terminate the tenancy only for:

1. Serious or repeated violation of material terms of the lease, such as the following:
  - i. Failure to make payments due under the lease; or
  - ii. Failure to fulfill household obligations, as described in 24 CFR 966.4(f).

### Housing Authority Procedure

The Housing Authority will terminate the lease for the following serious or repeated of material terms of the lease:

1. Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8-Leasing and Inspections for details pertaining to lease requirements for payments due);
2. Repeated late payment of rent or other charges. Four (4) late payments within a six (6) month period shall constitute a repeated late payment.
3. Failure to fulfill the following household obligations:
  1. Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
  2. Not to provide accommodations for boarders or lodgers.
  3. To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose.
  4. To abide by necessary and reasonable regulations promulgated by the Housing Authority for the benefit and well-being of the housing project and the tenants which shall be posted in the rental office and incorporated by reference in the lease.
  5. To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety.
  6. To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition.
  7. To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner.
  8. To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances include elevators.
  9. To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or development.
  10. To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the development (including damages to buildings, facilities or common areas) caused by the tenant, a member of the household or a guest.

11. To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the development in a decent, safe and sanitary condition.
12. To assure that no tenant, member of the tenant's household, or guest engages:
  - (i) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or
  - (ii) Any drug-related criminal activity on or off the premises
  - (xiii) To assure that no other person under the tenant's control engages in:
13. Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or
  - (i) Any drug-related criminal activity

In making its decision to terminate the lease, the Housing Authority will consider alternatives as described in Section 13-III.D of this chapter as well as other factors as described in Section 13-III.E of this chapter.

**13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4 (I)]**  
HUD authorizes Housing Authorities to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as "other good cause."

**Other Good Cause**

The regulations provide examples of other good cause, but do not limit the Housing Authority to only those examples.

Housing Authority Procedure

The Housing Authority will terminate the lease for the following reasons.

1. Fugitive Felon or Parole Violator: If a tenant, member of tenant's household, or guest is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.

2. Persons subject to sex offender registration requirement: If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.
3. Discovery after admission of facts that made the tenant ineligible.
4. Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income.
5. Failure to furnish such information and certifications regarding family composition and income as may be necessary for the Housing Authority to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size.
6. Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the Housing Authority that such a dwelling unit is available.
7. Failure to permit access to the unit by the Housing Authority after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists.
8. Failure to promptly inform the Housing Authority of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within thirty (30) days of the event.
9. Failure to abide by the provisions of Housing Authority policies.
10. If the family has breached the terms of a repayment agreement entered into with the Housing Authority.
  1. If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.
  2. If a household member has engaged in or threatened violent or abusive behavior toward Housing Authority personnel.
    - **Abusive or violent behavior towards Housing Authority personnel** includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
    - **Threatening** refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate the lease, the Housing Authority will consider alternatives as described in Section 13-III.D of this chapter as well as other factors as described in Section 13-III.E of this chapter.

#### **Family Absence from Unit [24 CFR 982.551(i)]**

It is reasonable that the family may be absent from the public housing unit for brief periods. However, the Housing Authority needs a Procedure on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

#### Housing Authority Procedure

The family must supply any information or certification requested by the Housing Authority to verify that the family is living in the unit, or relating to family absence from the unit, including any Housing Authority-requested information or certification on the purposes of family absences. The family must cooperate with the Housing Authority for this purpose.

The family must promptly notify the Housing Authority when all family members will be absent from the unit for an extended period. An extended period is defined as more than thirty (30) calendar days. If a family is absent from the public housing unit for more than, ninety (90) cumulative days and the family does not adequately verify that they are living in the unit, the Housing Authority will terminate the lease for other good cause.

*Abandonment.* If the family appears to have vacated the unit without giving proper notice, the Housing Authority will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the Housing Authority will secure the unit immediately to prevent vandalism and other criminal activity.

#### **Over-Income Families [24 CFR 960.261**

Subject to certain restrictions, HUD authorizes Housing Authorities to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, the Housing Authority may not evict or terminate the tenancy of a family solely because the family is over income if:

- a. The family has a valid contract of participation in the Family Self-Sufficiency (FSS) program; or
- b. The family is currently receiving the earned income disallowance.

This rule does not require Housing Authorities to evict over-income residents, but rather gives Housing Authorities the discretion to do so thereby making units available for applicants who are income-eligible.

#### Housing Authority Procedure

The Housing Authority may evict or terminate the tenancies of families solely because they are over income.

### **13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY Exclusion of Culpable Household Member [24 CFR 966.4(I)(5)(vii)(C)]**

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that the Housing Authority may consider exclusion of the culpable household member.

#### Housing Authority Procedure

The Housing Authority may consider requiring the tenant to exclude a culpable household member, in order to continue to reside in the assisted unit, where that culpable 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 written third party written documentation of the former culpable household member's current address.

### **Repayment of Family Debts**

#### Housing Authority Procedure

If a family owes amounts to the Housing Authority, as a condition of continued occupancy, the Housing Authority will require the family to repay the full amount or to enter into a repayment agreement, within thirty (30) days of receiving notice from the Housing Authority of the amount owed. See Chapter 16-Program Administration for policies on repayment agreements.

### **13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY**

A Housing Authority that has grounds to terminate a tenancy is not required to do so, except as explained in Part II, Termination by Housing Authority - Mandatory of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

#### **Evidence**

For criminal activity, HUD permits the Housing Authority 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.

#### Housing Authority Procedure

The Housing Authority 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(I)(5)(vii)(B)]**

In a manner consistent with such policies, procedures and practices, the Housing Authority may consider all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.

### **Housing Authority Procedure**

The Housing Authority 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:

- a. The seriousness of the offending action, especially with respect to how it would affect other residents.
- b. 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 or a person with disabilities.
- c. The effects that the eviction will have on other family members who were not involved in the action or failure to act.
- d. The effect on the community of the termination, or of the Housing Authority's failure to terminate the tenancy.
- e. The effect of the Housing Authority's decision on the integrity of the public housing program.
- f. The demand for housing by eligible families who will adhere to lease responsibilities.
- g. 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.
- h. The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future.
- i. 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(I)(5)(vii)(D)]**

HUD authorizes Housing Authorities 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.



### Housing Authority Procedure

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

### **Reasonable Accommodation [24 CFR 966.7]**

If the family includes a person with disabilities, the Housing Authority's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with [24 CFR Part 8].

### Housing Authority Procedure

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, the Housing Authority will determine whether the behavior is related to the disability. If so, upon the family's request, the Housing Authority will determine whether alternative measures are appropriate as a reasonable accommodation. The Housing Authority will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination. See Chapter 2, Fair Housing and Equal Opportunity.

### **Non-discrimination Limitation [24 CFR 966.4(I)(5)(vii)(F)]**

The Housing Authority's eviction actions must be consistent with fair housing and equal opportunity provisions of [24 CFR 5.105].

## **PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING**

### **13-IV.A. OVERVIEW**

HUD regulations specify the notification requirements that must be provided to the resident 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 Housing Authorities to conduct criminal records checks on public housing residents for lease enforcement and eviction. Housing Authority Procedure determines when the Housing Authority will conduct such checks.

### Housing Authority Procedure

The Housing Authority will conduct criminal background checks when it has come to the attention of the Housing Authority, either from local law enforcement or by other means, that a resident may be engaging in criminal activity, including, but not limited to, the

following:

- a. Engaging in the destruction of property;
- b. Engaging in violent activity against another person; or
- c. 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 (including release of information form). If there is not one file, one must be signed.

**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 Housing Authority 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 Housing Authority 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 Housing Authority 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.

Housing Authority Procedure

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the Housing Authority 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 ten (10) business days from the date of the Housing Authority notice, to dispute the accuracy and relevance of the information. If the family does not contact the Housing Authority to dispute the information within that ten (10) business day period, the Housing Authority will proceed with the termination action.

**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 Housing Authority documents directly relevant to the termination or eviction. If the Housing Authority does not make the documents available for examination upon request by the tenant, the Housing Authority may not proceed with the eviction [24 CFR 966.4(m)].

When the Housing Authority 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 Housing Authority'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 Housing Authority 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 the 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 Housing Authority 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 Housing Authority, or for a drug-related criminal activity on or off the premises.

#### Housing Authority Procedure

The Housing Authority 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 posted on the tenant's front door and sent by first class mail.

#### **Timing of the Notice [24 CFR 966.4(l)(3)(i)]**

The Housing Authority must give written notice of lease termination for the following:

- a. Fourteen (14) calendar days in the case of failure to pay rent.
- b. A reasonable period of time considering the seriousness of the situation (but not to exceed thirty (30) calendar days):
  - If the health or safety of other residents, Housing Authority 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; or
  - If any member of the household has been convicted of a felony.
- c. Thirty (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.

#### Housing Authority Procedure

The Housing Authority will give written notice of ten (10) days for criminal activity. The Housing Authority will give written notice of fourteen (14) calendar days for nonpayment of rent. For all other lease terminations the Housing Authority will give no more than thirty (30) days written notice or, if state or local law allows less than thirty (30) days, such shorter notice will be given.

**Notice of Non-Lease Renewal 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 Housing Authority determines 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 Chapter 11, Community Service, Section 11-I.E.

Housing Authority Procedure

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 time frame, 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 twelve (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 Chapter 11-Community Service, 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 Housing Authority either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14- Grievances and Appeals for the Housing Authority'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 Housing Authority 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.

The Housing Authority may not proceed with an eviction action if the Housing Authority 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).

Housing Authority Procedure

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the Housing Authority 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 Housing Authority will seek the assistance of the court to remove the family from the premises as per state and local law.

#### **13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(I)(5)(iii)(B)]**

When the Housing Authority evicts an individual or family for criminal activity, including drug-related criminal activity, the Housing Authority 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-Program Administration.

##### Housing Authority Procedure

A written record of every termination and/or eviction will be maintained by the Housing Authority for four (4) years at the development where the family was residing, and the file will contain the following information:

- a. Name of resident, number and identification of unit occupied.
- b. 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.
- c. 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).
- d. Date and method of notifying the resident.
- e. Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions.

## Chapter 14 GRIEVANCES AND APPEALS

### INTRODUCTION

This chapter discusses grievances and appeals pertaining to Housing Authority actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Reviews for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

### PART I: INFORMAL REVIEWS FOR PUBLIC HOUSING APPLICANTS

#### 14-I.A. OVERVIEW

When the Housing Authority 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 review. HUD regulations do not provide a structure for or requirements regarding informal reviews for applicants (except with regard to citizenship status, to be covered in Part II of this chapter). This part discusses the Housing Authority policies necessary to respond to applicant appeals through the informal review process.

#### 14-I.B. INFORMAL REVIEW PROCESS [24 CFR 960.208(a)]

Informal reviews 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 reviews 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 Housing Authority grievance procedure [24 CFR 966.53(a)].

Informal reviews 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 Review Process

While the Housing Authority must offer the opportunity of an informal review to applicants who have been determined as ineligible for admission, the Housing Authority could make the informal review process available to applicants who wish to dispute other Housing Authority actions that adversely affect them.

#### Housing Authority Procedure

The Housing Authority will only offer informal reviews to applicants for the purpose of disputing denials of admission.

### **Notice of Denial [24 CFR 960.208(a)]**

The Housing Authority 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 Housing Authority decision, and must also state that the applicant may request an informal review to dispute the decision. The notice must describe how to obtain the informal review.

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 Chapter 3-Eligibility, Section 3.III.G. Notice of Eligibility or Denial, for details concerning this requirement.

### **Scheduling an Informal Review**

#### Housing Authority Procedure

A request for an informal review must be made in writing and delivered to the Housing Authority either in person or by first class mail, by the close of the business day, no later than ten (10) business days from the date of the Housing Authority's notification of denial of admission.

The Housing Authority must schedule and send written notice of the informal review within ten (10) business days of the family's request.

### **Conducting an Informal Review**

#### Housing Authority Procedure

The informal review will be conducted by a person other than the one who made the decision under review. The review may be conducted by Director of Housing Programs or his/her designee, or a hearing officer.

The applicant will be provided an opportunity to present written or oral objections to the decision of the Housing Authority.

The person conducting the informal review will make a recommendation to the Housing Authority, but the Housing Authority is responsible for making the final decision as to whether admission should be granted or denied.

### **Informal Review Decision**

#### Housing Authority Procedure

The Housing Authority will notify the applicant of the Housing Authority's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the Housing Authority will evaluate the following matters:

- a. Whether or not the grounds for denial were stated factually in the notice;
- b. The validity of grounds for denial of admission: If the grounds for denial are not specified in the regulations or in Housing Authority Procedure, then the decision to deny assistance will be overturned. See Chapter 3-Eligibility for a detailed discussion

of the grounds for applicant denial; and

- c. The validity of the evidence: The Housing Authority 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 Housing Authority will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, the Housing Authority will consider the recommendation of the person conducting the informal review in making the final decision whether to deny admission.

The Housing Authority will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, within ten (10) business days of the informal review, to the applicant representative, if any.

If the informal review decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

#### **Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]**

Persons with disabilities may request a reasonable accommodation to participate in the informal review process and the Housing Authority must consider such reasonable accommodation requests. The Housing Authority must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2, Fair Housing and Equal Opportunity 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) formerly known as Immigration and Naturalization Service (INS) appeal process. Assistance to a family may not be terminated or denied while the Housing Authority 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 Housing Authority 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 Chapter 3-Eligibility and Chapter 13-Lease Terminations, 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 Housing Authority 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 Housing Authority receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the Housing Authority must notify the family of the results of the USCIS verification. The family will have thirty (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 Housing Authority with a copy of the written request for appeal and proof of mailing.

#### Housing Authority Procedure

The Housing Authority will notify the family in writing of the results of the USCIS secondary verification within ten (10) business days of receiving the results.

The family must provide the Housing Authority with a copy of the written request for appeal and proof of mailing within ten (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 Housing Authority, of its decision. When the USCIS notifies the Housing Authority of the decision, the Housing Authority must notify the family of its right to request an informal hearing.

#### Housing Authority Procedure

The Housing Authority will send written notice to the family of its right to request an informal hearing within ten (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 Housing Authority provide a hearing. The request for a hearing must be made either within thirty (30) days of receipt of the Housing Authority notice of denial, or within thirty (30) days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

### **Informal Hearing Officer**

The Housing Authority 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 Housing Authority 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.

### Housing Authority Procedure

The family will be allowed to copy any documents related to the hearing at a cost of \$.35 per page. The family must request discovery of Housing Authority documents no later than two (2) business days prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the Housing Authority, and to confront and cross-examine all witnesses on whose testimony or information the Housing Authority 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 Housing Authority, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, the Housing Authority is still obligated to provide oral translation services in accordance with its Language Access Plan (LAP).

### **Recording of the Hearing**

The family is entitled to have the hearing recorded by audiotape. The Housing Authority may, but is not required to provide a transcript of the hearing.

### Housing Authority Procedure

The Housing Authority will not provide a transcript of an audio tape at the time of the informal hearing.

### **Hearing Decision**

The Housing Authority must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within ten (10) business 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 Housing Authority must retain for a minimum of five (5) years the following documents that may have been submitted to the Housing Authority by the family, or provided to the Housing Authority as part of the USCIS appeal or the Housing Authority 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 Housing Authority provide a hearing. The request for a hearing must be made either within thirty (30) days of receipt of the Housing Authority notice of termination, or within thirty (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 of this chapter.

## PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

### 14-III.A. REQUIREMENTS [24 CFR 966.52]

Housing Authorities must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any Housing Authority action or failure to act involving the lease or Housing Authority policies which adversely affect their rights, duties, welfare, or status.

#### Housing Authority Procedure

The Housing Authority grievance procedure will be incorporated by reference in the tenant lease.

The Housing Authority must provide at least thirty (30) days notice to tenants and resident organizations setting forth proposed changes in the Housing Authority grievance procedure, and providing an opportunity to present written comments. Comments submitted must be considered by the Housing Authority before adoption of any grievance procedure changes by the Housing Authority.

#### Housing Authority Procedure

Residents and resident organizations will have thirty (30) calendar days from the date they are notified by the Housing Authority of any proposed changes in the Housing Authority grievance procedure, to submit written comments to the Housing Authority.

The Housing Authority must furnish a copy of the grievance procedure to each tenant.

### 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 Housing Authority action or failure to act in accordance with the individual tenant’s lease or Housing Authority regulations which adversely affect the individual tenant’s rights, duties, welfare or status.
- **Complainant** – any tenant whose grievance is presented to the Housing Authority or at the project management office.
- **Due Process Determination** – a determination by HUD that laws of the jurisdiction require 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:
  1. Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction.

2. Right of the tenant to be represented by counsel.
  3. Opportunity for the tenant to refute the evidence presented by the Housing Authority including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have.
  4. A decision on the merits.
- Business Days shall mean Monday through Friday (excepting holidays and other days in which Housing Authority's office is scheduled to be closed) during regular office hours.
  - Escrow Funds shall mean money placed in a separate account to be held until decision of the hearing officer(s).
  - **Hearing Officer** – a person selected in accordance with HUD regulations (24 CFR 966.55) to hear grievances and render a decision with respect thereto.
  - **Tenant** – the adult person (or persons) (other than a live-in aide):
    1. Who resides in the unit, and who executed the lease with the Housing Authority as lessee of the dwelling unit, or, if no such person now resides in the unit, or
    2. 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 Housing Authority'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 Housing Authority. It is not applicable to disputes between tenants not involving the Housing Authority. 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 Procedure changes of the Housing Authority.

If HUD has issued a due process determination, the Housing Authority may exclude from the Housing Authority 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 Housing Authority;**
- **Any violent or drug-related criminal activity on or off such premises; or**
- **Any criminal activity that resulted in felony conviction of a household member.**

In states without due process determinations, Housing Authorities 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. of this chapter, to deal with the first two of the above three categories of lease terminations.

If HUD has issued a due process determination, the Housing Authority may evict through the state/local judicial eviction procedures. In this case, the Housing Authority is not required to provide the opportunity for a hearing under the Housing Authority's grievance procedure as described above.

#### Housing Authority Procedure

The Housing Authority is located in a due process state. Therefore, the Housing Authority will not offer grievance hearings for lease terminations involving criminal activity that resulted in a felony conviction of a household member or that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the Housing Authority, or for drug-related criminal activity on or off the premises.

#### **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 Housing Authority Administration office or the rental office in the development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

#### Housing Authority Procedure

The Housing Authority will accept requests for an informal settlement of a grievance either orally or in writing, to the rental office in the development in which the complainant resides within ten (10) business days to grieve the event. Within ten (10) business days of receipt of the request the Housing Authority 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 Housing Authority 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 Housing Authority'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.

#### Housing Authority Procedure

The Housing Authority will prepare a summary of the informal settlement within ten (10) business days; one copy to be given to the tenant and one copy to be retained in the Housing Authority's tenant file.

#### **14-III.E. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55] Requests for Hearing and Failure to Request [24 CFR 966.55(a), (c), and (d)]**

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer, the hearing officer 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.

#### Housing Authority Procedure

The resident must submit a written request for a grievance hearing to the Housing Authority within ten (10) business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the Housing Authority'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 Housing Authority's action in disposing of the complaint in an appropriate judicial proceeding [24 CFR 966.55(c)].

#### **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 promptly for a time and place reasonably convenient to both the complainant and the Housing Authority. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate Housing Authority official.

#### Housing Authority Procedure

Within ten (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 Housing Authority.

The Housing Authority may wish to permit the tenant to request to reschedule a hearing for good cause.

#### Housing Authority Procedure

The tenant may request to reschedule a hearing once 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 in writing at least twenty-four (24) hours prior to the hearing date. The Housing Authority will request third party verification of the "good cause" prior to rescheduling the hearing.

#### **14-III.F. SELECTION OF HEARING OFFICER [24 CFR 966.55(b)]**

The grievance hearing must be conducted by an impartial person or persons appointed by the Housing Authority, other than the person who made or approved the Housing Authority action under review, or a subordinate of such person.

##### Housing Authority Procedure

Housing Authority grievance hearings will be conducted by a single hearing officer and not a panel. The Housing Authority has designated the following to serve as hearing officers:

- Housing Authority staff at a supervisory level, management level or designee;
- Independent third party hired as a hearing officer.

The Housing Authority 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.

#### **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 which includes:

1. The opportunity to examine before the grievance hearing any Housing Authority 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 Housing Authority does not make the document available for examination upon request by the complainant, the Housing Authority may not rely on such document at the grievance hearing.

##### Housing Authority Procedure

The tenant will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of Housing Authority documents no later than two (2) business days prior to the hearing.

2. 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.

##### Housing Authority Procedure

Hearings may be attended by the following applicable persons:

- A Housing Authority representative(s) and any witnesses for the Housing Authority;
- The tenant and any witnesses for the tenant;
- The tenant's counsel or other representative; and
- Any other person approved by the Housing Authority 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 Housing Authority or project management, and to confront and cross-examine all witnesses upon whose testimony or information the Housing Authority 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 may render a decision without proceeding with the hearing if the hearing officer determines that the issue has been previously decided in another proceeding.

**Failure to Appear [24 CFR 966.56(d)]**

If the complainant or the Housing Authority fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for not to exceed five (5) business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the Housing Authority must be notified of the determination by the hearing officer; *provided* that a determination that the complainant has waived their right to a hearing will not constitute a waiver of any right the complainant may have to contest the Housing Authority’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.

Housing Authority Procedure

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to fifteen (15) minutes. If the tenant appears within fifteen (15) minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within fifteen (15) minutes of the scheduled time, they will be considered to have failed to appear. If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the Housing Authority within twenty-four (24) hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict, which seriously affects the health, safety, or welfare of the family.

**General Procedures [24 CFR 966.56(e), (f), and (g)]**

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the Housing Authority must sustain the burden of justifying the Housing Authority action or failure to act against which the complaint is directed.

The hearing must be conducted informally by the hearing officer. The Housing Authority 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.

### Housing Authority Procedure

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

1. **Oral evidence:** the testimony of witnesses
2. **Documentary evidence:** a writing, which is relevant to the case, for example, a letter written to the Housing Authority. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.
3. **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.
4. **Real evidence:** A tangible item relating directly to the case.

If the Housing Authority fails to comply with the discovery requirements (providing the tenant with the opportunity to examine Housing Authority documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the Housing Authority to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The hearing officer must require the Housing Authority, 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 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 Housing Authority may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing.

### Housing Authority Procedure

If the complainant would like the Housing Authority to record the proceedings by audiotape, the request must be made to the Housing Authority at least two (2) business days prior to the hearing.

The Housing Authority will consider that an audio tape recording of the proceedings is a transcript.

Any interested party may purchase a copy of such transcript for \$2.00 [24 CFR 966.56(g)].

### **Reasonable Accommodations of Persons with Disabilities [24 CFR 966.56(h)]**

The Housing Authority 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, Fair Housing and Equal Opportunity, for a thorough description of the Housing Authority's responsibilities pertaining to reasonable accommodation.

#### **14-III.H. DECISION OF THE HEARING OFFICER [24 CFR 966.57 (a)(b)(c)]**

The hearing officer 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 Housing Authority. The Housing Authority 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 Housing Authority and made available for inspection by a prospective complainant, representative, or the hearing officer [24 CFR 966.57(a)].

#### Housing Authority Procedure

In rendering a decision, the hearing officer will consider the following matters:

1. **Housing Authority Notice to the Family:** The hearing officer will determine if the reasons for the Housing Authority's decision are factually stated in the notice.
2. **Discovery:** The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with Housing Authority Procedure.
3. **Housing Authority Evidence to Support the Housing Authority 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 Housing Authority's conclusion.
4. **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 Housing Authority policies. If the grounds for termination are not specified in the regulations or in compliance with Housing Authority policies, then the decision of the Housing Authority will be overturned.

The hearing officer will issue a written decision to the family and the Housing Authority no later than ten (10) business days after the hearing. The report will contain the following information:

1. **Hearing information:**
  - Name of the complainant
  - Date, time and place of the hearing
  - Name of the hearing officer
  - Name of the Housing Authority representative(s)
  - Name of family representative (if any)
  - Names of witnesses (if any)
2. **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.

3. **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.
4. **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.
5. **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 Housing Authority's decision.
6. **Order:** The hearing report will include a statement of whether the Housing Authority's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the Housing Authority 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 Housing Authority to restore the family's status.

## **Procedures for Further Hearing**

### Housing Authority Procedure

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 Housing Authority will take effect and another hearing will not be granted.

### **Final Decision [24 CFR 966.57(b)]**

The decision of the hearing officer is binding on the Housing Authority which must take the action, or refrain from taking the action cited in the decision unless the Housing Authority Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern Housing Authority action or failure to act in accordance with or involving the complainant's lease on Housing Authority policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer is contrary to Federal, state, or local law, HUD regulations or requirements of the Annual Contributions Contract (ACC) between HUD and the Housing Authority.

A decision by the hearing officer in favor of the Housing Authority or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].

## **Chapter 15 PROGRAM INTEGRITY**

### **INTRODUCTION**

The Housing Authority is committed to ensuring that funds made available to the Housing Authority are spent in accordance with HUD requirements.

This chapter covers HUD and Housing Authority policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents Housing Authority policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the Housing Authority must and may take when errors or program abuses are found.

### **PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE**

#### **15-I.A. PREVENTING ERRORS AND PROGRAM ABUSE**

HUD created the Enterprise Income Verification (EIV) system to provide the Housing Authority with a powerful tool for preventing errors and program abuse. The Housing Authority is required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR

5.233]. -Housing Authorities are further required to:

- Provide applicants and residents with form HUD-52675, "Debts Owed to PHAs and Terminations."
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file.

#### Housing Authority Procedure

The Housing Authority anticipates that the vast majority of families and Housing Authority employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the Housing Authority's program is administered effectively and according to the highest ethical and legal standards, the Housing Authority will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The Housing Authority will employ a variety of methods to detect errors and program abuse, including:

1. The Housing Authority will provide each applicant and resident with a copy of "Is Fraud Worth It?" (Form HUD-1141-OIG), which explains the types of actions a family

must avoid and the penalties for program abuse.

2. The Housing Authority will provide each applicant and resident with a copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, the Housing Authority will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.
3. The Housing Authority 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.
4. The Housing Authority will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The Housing Authority 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 checklist to confirm that all rules and pertinent regulations were explained to them.
5. Housing Authority staff will be required to review and explain the contents of all HUD and Housing Authority required forms prior to requesting family member signatures.
6. The Housing Authority 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 Housing Authority forms and form letters that request information from a family member.
7. The Housing Authority will provide each Housing Authority 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 Housing Authority will use a variety of activities to detect errors and program abuse.

#### **Quality Control and Analysis of Data**

##### Housing Authority Procedure

The Housing Authority will employ a variety of methods to detect errors and program abuse, including:

1. The Housing Authority routinely will use available sources of up-front income verification to compare with family-provided information.
2. 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.

3. The Housing Authority will compare family-reported income and expenditures to detect possible unreported income.

### **Independent Audits and HUD Monitoring**

The Office of Management and Budget (OMB), Circular A-133 requires the Housing Authority that expends \$500,000 or more in federal awards annually to have an independent audit. In addition, HUD conducts periodic on-site and automated monitoring of Housing Authority activities and notifies the Housing Authority of errors and potential cases of program abuse.

#### Housing Authority Procedure

The Housing Authority will use the results reported in any independent audit or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the Housing Authority's error detection and abuse prevention efforts.

### **Individual Reporting of Possible Errors and Program Abuse**

#### Housing Authority Procedure

The Housing Authority will encourage staff, residents, and the public to report possible program abuse.

### **15-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE When the Housing Authority Will Investigate**

#### Housing Authority Procedure

The Housing Authority 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 Housing Authority 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 Housing Authority 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 Housing Authority may investigate possible instances of error or abuse using all available Housing Authority and public records. If necessary, the Housing Authority will require applicant/resident families to give consent to the release of additional information.

### **Analysis and Findings**

#### Housing Authority Procedure

The Housing Authority will base its evaluation on a preponderance of the evidence collected during its investigation.

For each investigation the Housing Authority will determine:

- a. Whether an error or program abuse has occurred;

- b. Whether any amount of money is owed to the Housing Authority; and
- c. What corrective measures or penalties will be assessed.

### **Consideration of Remedies**

All errors and instances of program abuse must be corrected prospectively. Whether the Housing Authority will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

#### Housing Authority Procedure

In the case of family-caused errors or program abuse, the Housing Authority will take into consideration:

- a. The seriousness of the offense and the extent of participation or culpability of individual family members;
- b. Any special circumstances surrounding the case;
- c. Any mitigating circumstances related to the disability of a family member; and/or
- d. The effects of a particular remedy on family members who were not involved in the offense.

### **Notice and Appeals**

#### Housing Authority Procedure

The Housing Authority will inform the tenant in writing of its findings and remedies within ten (10) business days of the conclusion of the investigation. The notice will include:

- a. A description of the error or program abuse;
- b. The basis on which the Housing Authority determined the error or program abuses;
- c. The remedies to be employed; and
- d. The family's right to appeal the results through an informal hearing or grievance hearing (Chapter 14-Grievances and Appeals).

## **PART II: CORRECTIVE MEASURES AND PENALTIES**

### **15-II.A. UNDERPAYMENT OR OVERPAYMENT**

An underpayment or overpayment includes an incorrect tenant rent payment by the family or an incorrect utility reimbursement to a family.

#### **Corrections**

#### Housing Authority Procedure

Whether the incorrect rental determination is an overpayment or underpayment, the Housing Authority must promptly correct the tenant rent and any utility reimbursement prospectively.



In this case, an increase will be effective after the required thirty (30) days notice prior to the first of the month after completion of processing by the Housing Authority. If the change resulted in a decrease, the overpayment by the family will be calculated retroactively to the date it should have been effective, and the family will be credited for the amount.

### **Reimbursement**

Whether the family is required to reimburse the Housing Authority or the Housing Authority 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 Admissions and Continued Occupancy Procedure (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 Housing Authority to use incorrect information provided by a third party.

### **Family Reimbursement to Housing Authority**

#### Housing Authority Procedure

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. The Housing Authority may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16, Program Administration. If the family fails to repay the amount owed, the Housing Authority will terminate the family's lease in accordance with the policies in Chapter 13, Lease Terminations.

### **Housing Authority Reimbursement to Family**

#### Housing Authority Procedure

The Housing Authority 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:

- a. Make a false statement to the Housing Authority [Title 18 U.S.C. Section 1001].
- b. Provide incomplete or false information to the Housing Authority [24 CFR 960.259(a)(4)].
- c. Commit fraud or make false statements in connection with an application for assistance or with reexamination of income [24 CFR 966.4(l)(2)(iii)(C)].

#### Housing Authority Procedure

Any of the following will be considered evidence of family program abuse:

- a. Offering bribes or illegal gratuities to the Housing Authority Board of Commissioners, employees, contractors, or other Housing Authority representatives;

- b. Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to the Housing Authority on the family's behalf;
- c. Use of a false name or the use of falsified, forged, or altered documents;
- d. Intentional misreporting of family information or circumstances (e.g., misreporting of income or family composition);
- e. Omitted facts that were obviously known by a family member (e.g., not reporting employment income); and/or
- f. Admission of program abuse by an adult family member.

The Housing Authority 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 Housing Authority may, at its discretion, impose any of the following remedies:

- The Housing Authority will require the family to repay any amounts owed to the program (Section 15.II.B of this chapter, Family Reimbursement to Housing Authority).
- The Housing Authority will require, as a condition of receiving or continuing assistance, that a culpable family member will not reside in the unit, Chapter 3, Eligibility (for applicants) and Chapter 13, Lease Terminations (for residents).
- The Housing Authority will deny admission or terminate the family's lease following the policies set forth in Chapter 3, Eligibility (for applicants) and Chapter 13, Lease Terminations (for residents).
- The Housing Authority may refer the family for state or federal criminal prosecution as described in section 15-II.D of this chapter.

### **15-II.C. HOUSING AUTHORITY CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of Housing Authority staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of a Housing Authority staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the Housing Authority personnel Procedure.

Housing Authority caused incorrect rent determinations include:

1. Failing to correctly apply public housing rules regarding:
  - a. Family composition
  - b. Income

- c. Assets
- d. Expenses

2. Errors in calculations.

### **Repayment to the Housing Authority**

The family is not required to repay an underpayment of rent if the error or program abuse is caused by Housing Authority staff.

### **Housing Authority Reimbursement to Family**

The Housing Authority 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**

#### Housing Authority Procedure

Any of the following will be considered evidence of program abuse by Housing Authority staff:

- a. Failure to comply with any public housing program requirements for personal gain.
- b. Failure to comply with any public housing program requirements as a result of a conflict of interest relationship with any applicant or resident.
- c. Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to the Housing Authority.
- d. Disclosing confidential or proprietary information to outside parties.
- e. Gaining profit as a result of insider knowledge of Housing Authority activities, policies, or practices.
- f. Misappropriating or misusing public housing funds.
- g. Destroying, concealing, removing, or inappropriately using any records related to the public housing program.
- h. Committing any other corrupt or criminal act in connection with any federal housing program.

## **15-II.D. CRIMINAL PROSECUTION**

#### Housing Authority Procedure

When the Housing Authority determines that program abuse by a family or Housing Authority staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, the Housing Authority 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 RECOVERY**

Housing Authorities 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 one hundred percent (100%) of program funds that the Housing Authority recovers [PIH 2007-27].

If the Housing Authority fails to enter into a repayment agreement, initiate litigation or begin eviction proceedings, 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 Housing Authority's grievance process.

## **Chapter 16 PROGRAM ADMINISTRATION**

### **INTRODUCTION**

This chapter discusses administrative policies and practices that are relevant to the activities covered in this ACOP. The policies are discussed in six (6) parts as described below:

Part I: Setting Utility Allowances. This part describes how utility allowances are established and revised. Also discussed are the requirements to establish surcharges for excess consumption of Housing Authority furnished utilities.

Part II: Establishing Flat Rents. This part describes the requirements and policies related to establishing and updating flat rent.

Part III: Repayment of Family Debts. This part contains policies for recovery of monies that have been underpaid by families and describes the circumstances under which the Housing Authority will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part IV: Public Housing Assessment System (PHAS). This part describes the PHAS indicators, how Housing Authorities are scored under PHAS, and how those scores affect a Housing Authority.

Part V: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the Housing Authority will follow.

Part VI: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the Housing Authority's reporting responsibilities related to children with environmental intervention blood lead levels that are living in public housing.

### **PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]**

#### **16-I.A. OVERVIEW**

Housing Authorities must establish allowances for Housing Authority-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)].

The Housing Authority must maintain a record that documents the basis on which utility allowances 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 Housing Authority must establish separate allowances for each utility and for each category of dwelling units the Housing Authority determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of a Housing Authority in establishing utility allowances for each dwelling unit

category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment [24 CFR 965.505].

Utilities include gas, electricity, and fuel for heating, water, sewage, and solid waste disposal for a dwelling unit. In addition, if the Housing Authority does 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.

Utility allowance amounts will vary by the rates in effect, size and type of unit, climatic location and siting 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.

### **Air Conditioning**

"If a Housing Authority 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 24 CFR 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)].

### Housing Authority Procedure

The Housing Authority has installed air-conditioning.

### **Utility Allowance Revisions [24 CFR 965.507]**

The Housing Authority 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 Housing Authority 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 ten (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.

### Housing Authority Procedure

Between annual reviews of utility allowances, the Housing Authority will only revise its utility allowances if such change, by itself or together with prior rate changes not adjusted for, results in a change of ten (10) percent or more from the rate on which the allowance was based.

### **16-I.C. SURCHARGES FOR HOUSING AUTHORITY-FURNISHED UTILITIES [24 CFR 965.506]**

For dwelling units subject to allowances for Housing Authority furnished utilities where check meters have been installed.

### **16-I.D. REASONABLE ACCOMMODATION [24 CFR 965.508]**

On request from a family that includes a disabled or elderly person, the Housing Authority 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.

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.

See Chapter 2, Fair Housing and Equal Opportunity for policies regarding the request and approval of reasonable accommodations.

## **PART II: ESTABLISHING FLAT RENTS**

### **16-II.A. OVERVIEW**

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Policies related to the use of flat rents, family choice of rent, flat rent hardships, are discussed in Chapter 6-Income and Rent Determinations.

### **16-II.B. FLAT RENTS [24 CFR 960.253(b)] Establishing Flat Rents**

1. The PHA must establish a [flat rent](#) for each public housing unit that is no less than 80 percent of the applicable Fair Market Rent (FMR) as determined under [24 CFR part 888](#), subpart A; or
2. HUD may permit a [flat rent](#) of no less than 80 percent of an applicable small area FMR (SAFMR) or unadjusted rent, if applicable, as determined by HUD, or any successor determination, that more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area used in [paragraph \(b\)\(1\)](#) of this section. If HUD has not determined an applicable SAFMR or unadjusted rent, the PHA must rely on the applicable FMR under paragraph (b)(1) or may apply for an exception [flat rent](#) under paragraph (b)(3).
3. The PHA may request, and HUD may approve, on a case-by-case basis, a [flat rent](#) that is lower than the amounts in paragraphs (b)(1) and (2) of this section, subject to the following requirements:
  - i. The PHA must submit a market analysis of the applicable market.
  - ii. The PHA must demonstrate, based on the market analysis, that the proposed [flat rent](#) is a reasonable rent in comparison to rent for other comparable unassisted units, based on the location, quality, size, unit type, and age of the

public housing unit and any amenities, housing services, maintenance, and utilities to be provided by the PHA in accordance with the lease.

- iii. All requests for exception [flat rents](#) under this paragraph (b)(3) must be submitted to HUD.

### **Review of Flat Rents [24 CFR 960.253(b)]**

The [flat rent](#) is determined annually, based on the market rental value of the unit as determined by this paragraph (b).

#### Housing Authority Procedure

The Housing Authority will review flat rents as needed to ensure that flat rents continue to mirror market rent values.

The Housing Authority will set the flat rents at no less than eight percent (80%) of the published Fair Market Rent.

### **Posting of Flat Rents**

#### Housing Authority Procedure

The Housing Authority will publicly post the schedule of flat rents in a conspicuous manner in the applicable rental office.

### **Documentation of Flat Rents [24 CFR 960.253]**

The Housing Authority must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by the Authority in accordance with this method.

## **PART III: FAMILY DEBTS OWED TO THE HOUSING AUTHORITY**

### **16-III.A. OVERVIEW**

This part describes the Housing Authority's policies for recovery of monies that have been underpaid by families.

#### Housing Authority Procedure

When an action or inaction of a resident family results in the underpayment of rent or other amounts, the Housing Authority holds the family liable to return any underpayments to the Housing Authority.

The Housing Authority may enter into repayment agreements in accordance with the policies contained in this chapter as a means to recover overpayments. The term *repayment agreement* refers to a formal document signed by a tenant and provided to the Housing Authority 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 Housing Authority, the Housing Authority may utilize other available collection alternatives including, but not limited to, the following:

1. Collection agencies
2. Small claims court
3. Civil law suit



4. State income tax set-off program
5. Referral to District Attorney

## **16-III.B. REPAYMENT PROCEDURE**

### **Family Debts Owed to the Housing Authority**

#### Housing Authority Procedure

Any amount due to the Housing Authority by a public housing family must be repaid. If the family is unable to repay the debt within thirty (30) days, the Housing Authority may offer to enter into a repayment agreement with the family 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 Housing Authority will terminate the family's tenancy in accordance with the policies in Chapter 14, Grievances and Appeals. The Housing Authority will also pursue other available collection alternatives.

#### **Repayment Agreement Guidelines**

All repayment agreements must be in writing, dated, signed by both the tenant and the Housing Authority, include the total retroactive rent amount owed, amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. At a minimum, repayment agreements must contain the following provisions:

1. Reference to the paragraphs in the Public Housing lease packet whereby the tenant is in non-compliance and may be subject to termination of tenancy or assistance in both.
2. The monthly retroactive rent repayment amount
3. The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.
4. Late and missed payments constitute default of the repayment agreement and may result in termination of tenancy and/or assistance.

### **Down Payment Requirement**

#### Housing Authority Procedure

Prior to the execution of a repayment agreement, the family must pay a minimum of twenty-five percent (25%) of the balance owed to the Housing Authority. The down payment requirement is only offered on balances over \$100 and the Housing Authority will only enter into repayment agreements on amounts over \$100.

### **Payment Time Period Thresholds**

#### Housing Authority Procedure

All amounts must be repaid within twelve (12) months. With the approval of the Asset

Manager, exceptions to the twelve (12) month time period may be made for mitigating circumstances

### **Execution of the Agreement**

#### Housing Authority Procedure

The head of household and spouse/co-head and all adult members (if applicable) must sign the repayment agreement.

### **Due Dates**

#### Housing Authority Procedure

All payments are due by the 7<sup>th</sup> calendar day of the month.

### **Non-Payment**

#### Housing Authority Procedure

If a payment is not received by the due date, and prior approval for the missed payment has not been given, the Housing Authority will send the family a delinquency notice giving the family fourteen (14) calendar days to make the 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 Housing Authority will terminate tenancy in accordance with the policies in Chapter 13, Lease Terminations.

If a family receives four (4) delinquency notices for unexcused late payments in a six (6) month period, the repayment agreement will be considered in default, and the Housing Authority will terminate tenancy in accordance with the policies in Chapter 13, Lease Terminations.

### **No Offer of Repayment Agreement**

#### Housing Authority Procedure

The Housing Authority 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 Housing Authority operates its public housing program with efficiency and can demonstrate to HUD or its independent auditors that the Housing Authority is using its resources in a manner that reflects its commitment to quality and service. The Housing Authority's policies and practices are consistent with the new Public Housing Assessment System (PHAS) outline in the 24 CFR parts 901 and 902 final published regulations. The Housing Authority is consistently assessing its program and strives to make improvements. The Housing Authority acknowledges that its performance ratings are important to sustaining its capacity to maintain flexibility and authority. The Housing Authority intends to diligently manage its current program operations and continuously make efforts to be in full compliance with PHAS. The policies and procedures of this program are established so that the standards are set forth by PHAS are demonstrated and can be objectively reviewed

by an auditor whose purpose is to evaluate performance.

#### **16-IV.B. PHAS SCORING [24 CFR 902.63; 24 CFR 902.67) and FR-5322-N-01]**

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 Housing Authority as high performing, standard, or troubled.

These designations can affect a Housing Authority in several ways:

- High-performing Housing Authorities are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
- Housing Authorities that are standard performers may be required to submit an improvement plan to eliminate deficiencies in the Housing Authority's performance [24 CFR 902.73(a)].
- Housing Authorities 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 Housing Authority performance [24 CFR 902.75].
- Housing Authorities that fail to execute or meet Memorandum of Agreement (MOA) requirements may be referred to the Departmental Enforcement Center [24 CFR 902.77].

Housing Authorities must post a notice of its final PHAS score and status in appropriate, conspicuous and accessible locations in its rental offices within two (2) weeks of receipt of its final score and status.

### **PART V: RECORD KEEPING**

#### **16-V.A. OVERVIEW**

The Housing Authority 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 Housing Authority 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**

##### Housing Authority Procedure

During the term of each public housing tenancy, and for at least three (3) years thereafter, the Housing Authority will keep all documents related to a family's eligibility, tenancy, and

termination.

### **16-V.C. RECORDS MANAGEMENT**

Housing Authorities must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

#### Housing Authority Procedure

All applicant and participant information will be kept in a secure location and access will be limited to authorized Housing Authority staff with EIV clearance.

Housing Authority 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.

If the family requests copies of documents, the Housing Authority will make the copies for the family and assess a charge of \$.35 per copy.

#### **Privacy Act Requirements [24 CFR 5.212 and Form HUD-9886]**

Applicants and participants, including all adults in their households, are required to sign the form HUD-9886 Authorization for Release of Information/Privacy Act Notice. This document incorporates the Federal Privacy Act Statement and describes the conditions under which HUD and the Housing Authority will release family information.

The Housing Authority's Procedure regarding release of information is in accordance with state and local laws, which may restrict the release of family information.

Any and all information, which would lead one to determine the nature and/or severity of a person's disability, must be kept in a separate folder and marked "confidential" or returned to the family member after its use. The personal information in this folder must not be released except on an "as needed" basis in cases where an accommodation is under consideration. All requests for access and granting of accommodations based on this information must be approved by the Asset Manager or designee.

The Housing Authority's practices and procedures are designed to safeguard the privacy of applicants and program participants. All applicant and participant files will be stored in a secure location, which is only accessible by authorized staff. All files must be signed for when removed from the secured file storage area. The Housing Authority will not collect or maintain sensitive Personally Identifiable Information (PII) without proper authorization. Additionally the Housing Authority will only collect PII that is needed for the purpose for which it is collected

- Personally Identifiable Information is defined in Office of Management and Budget (OMB), M-07-16 as ". . . information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc."
- Sensitive Personally Identifiable Information is PII that when lost, compromised or disclosed without authorization could substantially harm an individual. Examples of sensitive PII include social security or driver's license numbers, medical records, and

financial account numbers such as credit or debit card numbers.

Housing Authority staff will not discuss family information contained in files 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 (reference Article 9).

The Housing Authority utilizes HUD's Enterprise Income Verification (EIV) system as an on-line source for income verification before or during a reexamination, through an independent source that systematically and uniformly maintains income information in a computerized format for a large number of individuals. This system enables the Housing Authority to check a variety of income sources for all family members, regardless of income sources reported by applicants and participants.

The Housing Authority staff may not disclose EIV data to any third parties (EIV data is property of HUD and protected by the Federal Privacy Act). Staff may only provide EIV data to the individual (only) to whom the record pertains. EIV data of minors may be provided to the minor's parent or guardian.

### **Upfront Income Verification (UIV) Records**

Housing Authorities 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.*

### **Housing Authority Procedure**

Prior to utilizing HUD's EIV system, the Housing Authority has adopted and implemented EIV HUD required security.

### **Criminal Records**

The Housing Authority may only disclose the criminal conviction records which the Housing Authority receives from a law enforcement agency to officers or employees of the Housing Authority, or to authorized representatives of the Housing Authority who have a job-related need to have access to the information [24 CFR 5.903(e)].

The Housing Authority must establish and implement a system of records management that ensures that any criminal record received by the Housing Authority 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 Housing Authority action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The Housing Authority must establish and implement a system of records management that ensures that any sex offender registration information received by the Housing Authority 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 Housing Authority 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 Housing Authority other than under 24 CFR 5.905.

### **Medical/Disability Records**

Housing Authorities are not permitted to inquire about the nature or extent of a person's disability. The Housing Authority may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the Housing Authority receives a verification document that provides such information, the Housing Authority should not place this information in the tenant file. The Housing Authority may 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 Housing Authority has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing. The Housing Authority shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within five (5) business days of being so notified by any other medical health care professional. The Housing Authority shall also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

Childhood lead poisoning has serious negative consequences on childhood growth and development. The U.S. Centers for Disease Control and Prevention (CDC) has consistently affirmed that deteriorated lead-based paint and lead-contaminated dust are the most hazardous sources of lead exposure in children. Lead-based paint can be found in homes built before 1978, with an increased prevalence in very old homes with original painted windows, doors, and trim (Jacobs et al., 2002; Cox et al., 2015).

In 2012, the CDC lowered its reference level for lead in the blood of children under age 6 to 5 micrograms of lead per deciliter of blood, and provided guidance for health departments and medical professionals at [www.cdc.gov/nceh/lead/acclpp/cdc\\_response\\_lead\\_exposure\\_recs.pdf](http://www.cdc.gov/nceh/lead/acclpp/cdc_response_lead_exposure_recs.pdf). On January 13, 2017, HUD amended the Lead Safe Housing Rule (LSHR) to align it with CDC's updated guidance.

Consistent with CDC's guidance, HUD is now using the reference level of 5 micrograms per deciliter to identify children with an elevated blood lead level (EBLL). This new level is the blood lead level of the highest 2.5 percent of U.S. children ages 1 to 5 years. CDC may revise this level in the future, and if so, HUD will update its EBLL as used under the LSHR, via the notice and comment process, as provided by the definition of EBLL in the amendment (24 CFR 35.110).

However, if a state or local government establishes more protective standards in response to lead in children's blood, LSHR's section 35.150 directs PHAs to follow those standards.

### **Key Definitions:**

**Assisted Units** means the Lead Safe Housing Rule covers federally-assisted and federally-owned “target” housing, which includes units assisted under Sections 8 and 9 of the United States Housing Act of 1937, as amended.

**Designated Party** means the housing agency or the property owner, as indicated in the applicable section, is responsible for complying with applicable requirements.

**Elevated Blood-Lead Level (EBLL)** elevated blood lead level means a confirmed concentration of lead in whole blood of a child under age 6 equal to or greater than the concentration in the most recent guidance published by the U.S. Department of Health and Human Services (HHS) on recommending that an environmental intervention be conducted.

A confirmed concentration is one that is measured by a venous (from a vein) blood draw, and not a finger prick/quick capillary screening test.

**Environmental Investigation** means a risk assessment with additional questions for the family regarding other sources of lead exposure (e.g., water, pottery, daycare settings), and testing of other potential sources of lead exposure.

**Expected to Reside** means the actual knowledge that a child will reside in a 0-bedroom dwelling unit or in a dwelling unit reserved or designated for the elderly and/or persons with disabilities. If a resident woman is known to be pregnant, there is actual knowledge that child will reside in the dwelling unit.

**Index Unit** means a unit where a child with an elevated blood lead level resides.

**Multi-unit Property** means a residential property containing two or more dwelling units. For the purposes of the LSHR, all buildings with assisted units or servicing those buildings (e.g., garages, toolsheds, etc.) associated with the property are covered by the requirements.

**Other Covered Units** means federally-assisted where a child under age 6 resides or is expected to reside in a multiunit property that has an index unit. The child’s age is considered as of the date the Environmental Investigation in the index unit and associated common areas is completed.

**Target Housing** means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless a child of less than 6 years of age resides or is expected to reside in such housing). In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, HUD may designate an earlier date.

The LSHR uses the approach of having a “designated party” responsible for complying with its requirements under a particular assistance program. Under some subparts of the LSHR, just the property owner is responsible, under some subparts, just the PHA, and under other subparts, the owner is responsible for certain activities, and the PHA, for others. Specifically:

- For public housing, the PHA is the designated party and is responsible for all the activities regarding EBLL response.

The update to the LSHR revised the type of evaluation that must be performed for the housing unit of a child with an EBL, and added risk assessment requirements covering certain other units, and new reporting requirements. Under the new regulations, the evaluation for the child's unit must be an environmental investigation.

### **Public Housing**

When a child under 6 is identified with an EBL, the "AUTHORITY" must take the following steps. (For a more detailed explanation, please refer to section 6.):

- **Initial notification of a confirmed case to HUD:** The "AUTHORITY" must notify the Field Office and HUD's Office of Lead Hazard Control (OLHCHH) of the EBL case within 5 business days.
- **Initial notification of a confirmed case to public health department, when necessary:** The PHA must notify the public health department of the EBL case within 5 business days when it received the notification of the case from another medical health care professional.
- **Verification of the case, when necessary:** If a PHA learns that a child has an EBL from someone other than a medical health care provider, such as from a parent, the PHA must immediately verify the report with the health department or medical health care provider.
- **Environmental Investigation:** The PHA must conduct an environmental investigation of the child's unit and the common areas servicing that unit within 15 calendar days in accordance with Chapter 16 of the HUD *Guidelines*, as described in section 6 below. If lead-based paint hazards are found in the index unit in a multiunit property, perform risk assessments in other covered units with a child under age 6 and the common areas servicing those units, as described in section 9 below.
- **Control:** The PHA must ensure that any lead-based paint hazards identified by the environmental investigation are controlled within 30 calendar days by a certified lead-based paint abatement firm or certified lead renovation firm, including having the unit and common area pass a post-work dust clearance exam in accordance with section 35.1340. If lead-based paint hazards are found in the index unit in a multiunit property, and the risk assessments in other covered units with a child under age 6 and the common areas servicing those units identified lead-based paint hazards, control those lead-based paint hazards as described in section 9 below.
- **Notification to other residents:** As already required by the LSHR, in a multiunit property, the "AUTHORITY" must notify all residents of lead evaluation and hazard control activities.
- **Follow-up notification:** The "AUTHORITY" must notify the HUD Field Office of the results of the environmental investigation and then of the lead hazard control work within 10 business days of each activity.
- **Ongoing maintenance and reevaluation:** As already required by the LSHR in sections 35.1120(c) and 35.1355(a), after the work passes clearance, the PHA must ensure that the unit and common areas are maintained as lead-safe for continued occupancy, which includes no deteriorated paint or failed lead hazard control methods. As also already required by the LSHR in section 35.1355(b), the "AUTHORITY" must generally conduct periodic reevaluations every two years, using a certified lead risk assessor, and respond to them. The reevaluations shall be for: deteriorated paint surfaces unless they are known not to be lead-based paint, deteriorated or failed interim controls of lead-based paint hazards or encapsulation or enclosure treatments, dust-lead hazards, and soil-lead hazards in newly-bare soil. Exceptions from the reevaluation requirement are in section 35.1355(b)(1) and (4); the requirements for responding to the reevaluations are in section 35.1355(c).



## **Responding to EBLs, Environmental Investigations, and Lead Hazard Control**

### **Verification:**

The first step the "AUTHORITY" or owner, as applicable, based on the type of assistance, must take when learning of a child with an EBL from a parent, guardian, or other person or entity that is not a medical health care provider is to verify the results, and determine whether it is a confirmed EBL. In accordance with Chapter 16 of the HUD *Guidelines*, a confirmed EBL is one measured through a venous (i.e., from a vein) blood draw, or two capillary blood specimens, drawn within 12 weeks of each other, both with elevated lead concentration. If the parent or guardian suspects that a child under 6 has an EBL based on a single finger print, they should see a medical health care provider to obtain confirmation.

The "AUTHORITY" can verify the report with the local health department or the child's medical health care provider.

If the parent or guardian provides the PHA or owner, as applicable, with a written EBL diagnosis from a medical healthcare professional, or the public health department notifies the PHA or owner, as applicable, of the case, no additional verification is needed.

If an EBL has been reported but not verified, the "AUTHORITY" shall make at least 2 attempts to verify the information with the medical health care provider or health department. If the "AUTHORITY" verification attempts fail, the "AUTHORITY" must inform the Field Office, which must attempt its own verification and/or inform OLHCHH, which will attempt the verification.

Once an EBL has been verified, the PHA (for public housing) or owner (for PBV or HCV housing), as applicable, must notify their field office representative and OLHCHH within 5 business days. Notifications to OLHCHH must be by done via email to [LeadRegulations@hud.gov](mailto:LeadRegulations@hud.gov). The "AUTHORITY" may wish to collaborate with the owner on this notification process, such as by agreeing with the owner to be notified of the results and then forwarding them to the Field Office and OLHCHH.

In the notification to their field office representative and OLHCHH, the "AUTHORITY" or owner, as applicable, must provide:

- PHA code and name, if the "AUTHORITY" is providing the notification, or Owner's name and address, if the owner is;
- Date of EBL test result;
- Program (public housing, HCV, project-based vouchers);
- Unit address and, if the housing is in a multi-unit property or development, the development name; and
- Whether the "AUTHORITY" or owner has notified the public health department of the EBL, or been notified by the health department, and the date of that notification.

### **Investigation:**

Next, the "AUTHORITY" or owner, as applicable, based on the type of assistance, or the "AUTHORITY" on behalf of the owner, if they have decided to collaborate in that way, must next ensure that a certified Lead-Based Paint Risk Assessor performs an "environmental investigation," as defined above, in the child's home and any common areas that service

the unit.

The environmental investigation must be completed within 15 calendar days after verification or notification by a public health department or other medical health care provider. PHAs and owners can find certified lead risk assessment firms through either their state lead licensing agency or EPA's website at [www.epa.gov/lead](http://www.epa.gov/lead).

In some cities and counties, the local public health department will evaluate the child's home for lead-based paint hazards and other possible sources of lead exposure when a child is found with an EBLL. In these instances, the "AUTHORITY" or owner, as applicable, is not required to perform an additional environmental investigation, and can rely on the results of the health department's evaluation.

After receiving the results of an environmental investigation (or an evaluation report from the health department), the "AUTHORITY" must notify their assigned HUD field office contact within 10 business days and the family of the results within 15 calendar days. The notifications must include the date the investigation was completed. If the evaluation was completed in a multiunit property, the PHA must also notify all residents that an evaluation was completed in accordance with section 35.125. This must be done by letter or notice delivered to each occupied dwelling unit affected by the evaluation, and not by central posting. The LSHR prohibits, for the protection of the privacy of the child and the child's family or guardians, notice of environmental investigation being posted to any centrally located common area. (See section 35.125(c)(4)(iii).)

### **Required Lead-Based Paint Hazard Control**

If lead-based paint hazards are identified by the environmental investigation, the hazards must be addressed within 30 calendar days of receiving the results. This means performing any necessary lead-based paint hazard control work in the unit and common areas servicing the unit, and conducting a clearance examination on the unit and common areas when the work is complete. The work must be performed by a certified lead abatement or lead renovation firm, with the clearance examination performed by a certified risk assessor or clearance sampling technician as described in section 35.1340.

The party that does the hazard control work and the clearance examination depends on the assistance program:

In the public housing program, the "AUTHORITY" is responsible for completing the hazard control work and conducting the clearance examination.

The HUD field office must be notified of the lead hazard control work that was completed and the results of the clearance examination within 10 business days of passing clearance. The party that does this notification depends on the assistance program:

- In the public housing program, the "AUTHORITY" is responsible for notifying the HUD field office.

### **Index Units**

In a case where the child discovered to have an EBLL lives in a multiunit property, the child's home is considered the "index unit" under the new regulations. If the index unit is found to contain lead-based paint hazards, additional evaluation is required for other assisted target housing units in the property where children under age 6 reside (known as other "covered units"). Note that a multiunit property can include multiple buildings, and

all buildings are covered if they meet the definition of target housing.

### **Index Units Recently Tested**

An index unit may not need a full environmental investigation under the following scenarios:

- An environmental investigation was performed by the health department or another party between the time that the child's blood was last sampled and the date that the "AUTHORITY", designated party or owner (as applicable) was notified of the EBLL. If a risk assessment was performed, a certified risk assessment firm can be brought in to conduct the elements of an environmental investigation that go beyond the requirements of a risk assessment.
- If a risk assessment was performed on the unit prior to the date that the child's blood was last sampled, the results of the risk assessment cannot be relied on, and a full environmental investigation must be performed.
- If the unit is scheduled for redevelopment or demolition, and the tenants are expected to be relocated within 45 calendar days. In this scenario, the "AUTHORITY" does not have to perform the environmental investigation if the family is relocated within 15 calendar days.
- In this scenario, the "AUTHORITY" may not know if the index unit contains lead-based paint hazards. Without test results, the "AUTHORITY" would have to presume all covered units contain lead-based paint hazards.
- Allowing the family to move from the index unit would not exempt any other covered unit in the property from the need for a risk assessment, unless those units are also scheduled for redevelopment or demolition and relocation is scheduled within 45 days.
- If the "AUTHORITY" chooses to perform an environmental investigation in the index unit anyway, and finds there are no lead-based paint hazards, additional testing or expedited relocation of families in covered units would not be necessary.

### **Other Covered Units of the Property (and Common Areas Servicing those Units)**

If the environmental investigation indicates there are lead-based paint hazards in the index unit or common areas servicing that unit, any other assisted units in the property with a child under age 6 residing ("Other Covered Units") must receive a risk assessment, as must common areas servicing those units. This includes other assisted units designated as housing for the elderly and/or persons with disabilities where a child under age 6 resides or is expected to reside. The party that conducts the risk assessments depends on the assistance program:

- In the public housing program, the PHA conducts the risk assessments.

The risk assessments of the other covered units must be conducted within 30 calendar days of receiving the results of the environmental investigation for a property with 20 other covered units or fewer, and within 60 calendar days for a property with more than 20 other covered units.

While the "AUTHORITY" or owner may, for its own strategic reasons, choose to conduct risk assessments on all the other assisted dwelling units with a child under age 6 (or even all the other assisted dwelling units or all the other dwelling units), random sampling of other covered dwelling units to be assessed is permissible in properties with more than 20 covered dwelling units for pre-1960 properties, and more than 10 covered dwelling units for 1960-1977 properties. HUD's sampling protocol can be found in Table 7.3 of the *Guidelines*, on page 7-38. For example, for a 1925 multiunit property in which there are 47 other covered units (with certain characteristics identified in the table) shows that at least 31 units are to be sampled randomly.

If the evaluation was completed in a multiunit property, all assisted residents must be notified that an evaluation was completed. The party that conducts the resident notification depends on the assistance program:

- The "AUTHORITY" is responsible for notifying the assisted residents.

All lead-based paint hazards identified by the risk assessments must be controlled. As under the original LSHR, if a random sampling of units and/or common areas is used in the risk assessment, if lead-based paint hazards were found in that sample, all units and/or common areas represented by the random sampling must have corresponding building components that have lead-based paint hazards in sampled and un-sampled units controlled, because the components in un-sampled units are presumed to have lead-based paint hazards.

### **Exemptions for Other Covered Units**

A covered dwelling unit is exempt from needing a risk assessment under the following scenarios:

- The property has been certified by a State- or EPA-certified lead inspector as lead-based paint free or all lead-based paint has been identified and removed through abatement, and clearance has been achieved. Lead-based paint free means that the housing has been found to be lead-based paint free by a State- or EPA-certified lead inspector in accordance with Chapter 7 of the Guidelines. This exemption would not be applicable to units that have undergone lead abatement through enclosure or encapsulation, because they still contain lead-based paint behind the enclosure or encapsulant.
- The dwelling unit is scheduled for demolition. While units scheduled for redevelopment are generally not exempt, language in the preamble to the Final Rule permits exemption of a dwelling unit for redevelopment where start of construction and completion of tenant relocation is to occur within 45 calendar days (i.e., the sum of the 15-day period for conducting the environmental investigation and the 30-day period for conducting lead hazard control in the unit). In that scenario, the dwelling unit does not need a risk assessment; however, the family must be relocated out of the unit within 15 calendar days.

A covered dwelling unit *may* be exempted from needing a risk assessment if one was recently performed and hazards were already controlled. Specifically:

- The "AUTHORITY" or owner conducted a risk assessment of the covered dwelling unit in question and the common areas servicing that unit, and any necessary interim controls on identified lead-based paint hazards were performed, including passing clearance. The risk assessment and controls must have been performed between the date the child's blood was last sampled and the date the owner received the notification of the elevated blood lead level; and
- The "AUTHORITY" or owner has documentation of compliance with evaluation, notification, lead disclosure, ongoing lead-based paint maintenance, and lead-based paint management requirements under this part throughout the 12 months preceding the date the owner received the environmental investigation report; and

Certified documentation is provided to the HUD field office to this effect, including copies of the risk assessment and the results, and a copy of the clearance exam. The party that provides this documentation depends on the assistance program:

- The "AUTHORITY" is responsible for providing the documentation to the HUD field office.

## **Monitoring and Enforcement**

HUD may request documentation of compliance with the LSHR at any time, for the HCV, PBV, and public housing programs.

### **Public Housing Program**

Compliance with the LSHR is included as part of the Capital Fund Program regulations at Part 905 Subpart H. PHAs annually certify compliance with new Capital Fund awards. PHAs that are not compliant with the LSHR may be subject to Sanctions described at Part 905-804, including limiting, withholding, reducing, or terminating Capital Fund or Operating Fund assistance.

PHAs that believe properties are exempt from the LSHR because leasing is done exclusively to elderly or persons with a disability can only qualify for this exemption if 1) the PHAs has a current, HUD-approved Designated Housing Plans, or 2) as described in the Quality Housing and Work Responsibility Act of 1998, the housing has been operating continuously as a mixed housing designated for both elderly and disabled residents. Evidence of the second option must be made available to HUD upon request. However, the Fair Housing Act prohibits PHA properties, including those designated for elderly and/or disabled occupancy, from excluding eligible families with children. Therefore, as described in section 3, regardless of the Designated Housing Plan, if a child under six resides or is expected to reside in the dwelling unit, that unit and common areas serving the dwelling unit lose their LSHR exemption.

HUD's Real Estate Assessment Center (REAC) inspectors will continue to request to view lead evaluation reports, i.e., reports of lead-based paint inspections, lead risk assessments, environmental investigations, clearance examinations, and Lead Disclosure Rule forms as part of regular physical assessments of public housing developments. PHAs should ensure that all relevant lead paint evaluation records are available at the property for the inspector.

## **Chapter 17 SMOKE-FREE POLICY**

### **17-I.A. INTRODUCTION**

To ensure quality of air and the safety of all public housing residents, the Authority has declared that all public housing communities have a Smoke-Free Policy. The Rule is intended to improve indoor air quality, benefit the health of public housing residents and PHA staff, reduce the risk of fires, and lower overall maintenance costs.

In accordance with Federal Register 87430, 24 CFR 903.7(b)(3), prohibited tobacco products are defined as items that involve the ignition and burning of tobacco leaves, (including, but not limited to, cigarettes, pipes, cigars, Kretek, ENDS e-cigarettes, vaping, and water pipe tobacco such as hookahs,) is prohibited in all the Authority public housing communities.

This includes all indoor areas including but not limited to residential units and interior common areas (including, but not limited to: hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures); and outdoor areas within twenty-five (25) feet from public housing and administrative office buildings (collectively, "restricted areas") and outdoor areas (apartments, entry ways, walkways, grassed areas, picnic areas, parking lots, and private vehicles parked on Housing Authority property). The Rule does not prohibit smoking by residents; rather, it requires that residents who smoke do so at least 25 feet away from the buildings.

The term "smoking" is defined as inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, or other similar tobacco products in any manner or in any forms.

The Smoke-Free Policy applies to all visitors, residents, contractors, volunteers, and vendors. Tenants and members of the household shall be responsible to enforce this Smoke-Free Policy as to their guests, invitees, and visitors to their residential units.

### **17-I.B. Responsibilities**

It is the responsibility of the Authority staff to educate residents and visitors about the Smoke-Free policy. Signage and printed material may be available for visitors at the management office of each development.

It is the responsibility of the resident and members of the household that for the health and safety of the Authority employees and their representatives, no one shall have any type of tobacco or related product burning at such time as any employee or representative of the Authority enters and remains in the apartment or unit. If anyone refuses to put out the burning tobacco or related product prior to the employee or representative entering the apartment, or if the resident lights a tobacco or related product while an employee or representative remains in the apartment, the employee or representative may vacate the apartment immediately and may not return until such time as there is no longer any tobacco or related product burning. This may result in a delay of services and all violations will be reported to the site management office.

All public housing residents and their guests, invitees, and visitors are expected to:

1. Comply with the Residential Tenancy Lease Agreement and House Rules;

2. Not smoke in any resident unit, Authority Offices, and within twenty-five (25) feet of any doors and windows at said premises;
3. Not cause or permit a nuisance;
4. Not interfere, or cause or permit interference with, the reasonable peace, comfort or privacy of others;
5. Be responsible for the behavior, conduct of their occupants and/or visitors to their unit, and ensure their compliance with the Authority designated Smoke-Free properties and common areas.

### **17-I.C. Violations**

A violation of the Smoke-Free policy will be considered a material violation of the residential lease. The Authority will utilize the following process to address the violations of the Smoke-Free policy:

1<sup>st</sup> Violation – Verbal Warning. The Authority may provide smoking cessation materials.

2<sup>nd</sup> Violation – A written letter of warning will be given and the Authority may provide smoking cessation materials.

3<sup>rd</sup> Violation – A final written violation letter will be served to the resident but resident will be given an option to remedy.

4<sup>th</sup> Violation – A thirty (30) day lease termination notice.

### **17-I.D. Cessation Resources**

All residents may be offered information regarding cessation programs and provided with access tools to assist them in quitting tobacco use, if they so choose.

## Chapter 18

### RESIDENTIAL RELOCATION AND RE-HOUSING PROCEDURE

#### 18-1.A. INTRODUCTION

Since 1942, the Housing Authority has and will continue to manage large-scale capital improvement projects in its public housing program. The Authority's extensive experience with these programs indicated that capital improvements require, in some cases, the relocation of residents from the units they occupy.

Public housing residents will generally be required to relocate when their development has received capital improvement funding for unit reconfiguration, major systems upgrading, substantial modernization, demolition, disposition, re-development or unit rehabilitation where a contractor's insurance prohibits on-going occupancy.

Residential relocation will, in all cases, require Housing Authority guarantees for permanent re-housing into units owned by the Housing Authority for residents who desire such assistance. Residential relocation may also require the Housing Authority guarantees for temporary relocation into units owned by the Housing Authority prior to assignments of permanent re-housing. In any case, relocation and permanent re-housing may or may not be to a unit located at the development where capital improvements are planned.

The Procedure herein, called the Housing Authority Residential Relocation and Re-Housing Procedure (RRP), establishes fair, objective, non-arbitrary and non-discriminatory policies for the temporary relocation and permanent re-housing of its residents due to the requirements of planned capital improvement programs.

The RRP has been established to maximize administrative efficiency, residential stability, applicant accessibility, equality of treatment, and overall fairness and objectivity throughout the course of planned construction.

The RRP has been established to fulfill applicable state and federal regulations, consistent with sound management practices and Procedure objectives.

The goals and objectives of the RRP are as follows:

1. To facilitate efficient construction through the temporary relocation of residents from units which require reconfiguration, major systems upgrading, or substantial modernization, demolition, re-development or disposition;
2. To guarantee permanent re-housing into units owned by the Housing Authority for all residents whose relocation is required due to unit reconfiguration, major systems upgrading, or substantial modernization, demolition, re-development, unit rehabilitation or disposition;
3. To assist residents with financial costs associated with all temporary and permanent relocation;
4. To minimize displacement to the greatest extent possible;
5. To develop a uniform set of standards for all capital improvement projects which require relocation, regardless of location, race, color, national origin (called "protected classes", ancestry, age, sex, marital status, disability, presence of children, religion, sexual orientation, gender identity/expression, source of income,



or military service of the resident population, familial status or funding source;

6. To provide fair, equitable, non-arbitrary, and non-discriminatory standards for the temporary and permanent relocation of residents to units owned by the Housing Authority;
7. To provide continued access by applicants to all developments owned by the Housing Authority, notwithstanding the existence of planned capital improvement programs which require on-site resident relocation; and
8. To provide appropriate accommodations for persons with disabilities.
9. Nothing in this Procedure shall nullify the rights of local, state or federal regulatory agencies to require changes in development-specific modernization, demolition, re-development, or disposition programs otherwise required by this Procedure in order to make them consistent with available funding or applicable statutes or regulations in effect at that time.

The Housing Authority plans to demolish, re-develop, or dispose of public housing units. The plans are subject to HUD approval in accordance with applicable state and federal laws or court orders.

The provisions of the Procedure shall apply to all Housing Authority owned public housing developments.

#### **18-I.B. NON-DISCRIMINATION**

The Housing Authority acts without discrimination on the basis of race, color, national origin (called "protected classes"), ancestry, age, sex, marital status, , disability, presence of children, religion, sexual orientation, gender identity/expression, source of income, familial status, or military service in all matters that pertain to the Authority's Residential Relocation and Re- Housing Procedure.

The Housing Authority shall take reasonable steps to safely house all residents relocated under this Procedure.

The Housing Authority may negotiate a different Relocation and Re-Housing Procedure with a local tenant organization in a situation of substantial rehabilitation, demolition, re-development, or disposition.

#### **18-I.C. NOTICE**

The Housing Authority shall provide a Notice of Relocation Policies, Benefits, and Requirements to all residents of a development whose relocation is required as a result of a capital improvement program. Such information shall be provided to residents as soon as the need for relocation due to a planned capital improvement program is determined. Notice shall be provided by personal service, and sent by Certified and Registered First-Class Mail, Return Receipt Requested.

Relocation notices shall be provided to residents in the languages identified by the Housing Authority as spoken by the residents of the development in accordance with the Language Access Plan (LAP).

Residents who wish to temporarily or permanently relocate off-site shall notify the Housing Authority within twenty (20) days of receipt of their Notice of Relocation Policies, Benefits and Requirements.

The Housing Authority shall conduct at least one (1) on-site Relocation Briefing Session

and one (1) Neighborhood Orientation Session for residents of the development undergoing planned re- development prior to the time when off-site relocation requests are due to the Housing Authority.

All residents who are required to temporarily or permanently relocate will be required to sign and return the appropriate relocation/re-housing agreements and all Authority administrative documents to the Authority no less than one hundred twenty (120) days prior to the anticipated date of their initial relocation.

#### **18-I.D. WAITING LISTS**

The Housing Authority may be required to reduce or curtail temporarily the number of applicants' offers of available units at developments with approved modernization or development plans in order to accommodate the need for on-site residential relocation.

The Housing Authority shall make a minimum of twenty percent (20%) of all vacancies at developments with approved modernization or development plans requiring resident relocation available for offers to applicants from the Housing Authority waiting list. The other eighty percent (80%) of all vacancies will be assigned according to the following priorities:

1. Temporary relocations;
2. Residents from any subsequent phase (in order of earliest date of tenancy); and
3. Authority agency wide or site specific waiting list.

In developments with approved capital improvement and/or redevelopment modernization plans, the number of households requiring relocation may be so numerous and the supply of projected or available appropriate vacant units so few that the Housing Authority will be compelled to close the site specific waiting list completely; for example, no new admissions from the site- specific waiting list. However, such closure shall be limited to a period of one (1) year from the date the closure is announced.

At the end of the first year, the Housing Authority will determine whether it is necessary to continue the closure for another year. At the conclusion of subsequent years, a similar determination of the feasibility will be made by the Housing Authority. The total number of available units withheld from applicant offers at the developments undergoing planned redevelopment shall not be greater than the number of units necessary to accommodate relocation, by construction phase, bedroom size and unit type.

#### **18-I.E. ELIGIBILITY**

Only qualified resident household members who are listed on the Tenant Lease at the time approval of funding for modernization or re-development is announced shall be considered eligible for temporary and permanent relocation assistance Only head of household, co-head or spouse may be assigned temporary or permanent units as a result of planned capital improvements

#### **18-I.F. DETERMINATION OF THE APPROPRIATE SIZE AND TYPE OF UNIT**

A household shall only be guaranteed a unit of a size and type which corresponds to the information on the Tenant Lease at the time when the capital improvement funds, which require relocation, are awarded to the Housing Authority; provided that the Housing Authority shall make efforts to reasonably accommodate households in which one or more members have a disability.

Upon the Housing Authority's notification of funding award<sup>1</sup>, the right of the resident household to make additions or deletions to the household composition shall be suspended, except that deletions and additions by birth, death, marriage and operation of law (adoption, guardianship, court-ordered or parental authorization in writing of custody of a minor) with the exclusion of foster children, will be accommodated to the best of the Housing Authority's ability to ensure that all tenant households are appropriately housed. All information on the household's Tenant Resident Dwelling Lease Agreement will be "frozen" in order to determine household unit size for temporary or permanent relocation in the modernized development.

The Housing Authority shall attempt to accommodate changes in the unit size authorized above or unit type for households requesting on-site relocation by offering on-site temporary and permanent units of appropriate sizes and types, if available.

On-site units of appropriate size and type may not be available for households who have requested on-site relocation, if their unit size or unit type changes during the course of the planned construction program.

On-site temporary units and permanent units of appropriate size and type may also not be available for households who have requested on-site relocation, if state or federal funding or construction program approvals do not provide for a sufficient unit mix to accommodate unit size or unit type needs in such situations, the Housing Authority shall offer the following relocation options:

1. Temporary and/or permanent relocation into an on-site unit of the most appropriate size and type available at the time relocation is required, provided that the head of household, co-head or spouse signs a waiver of the required the Housing Authority Occupancy Standards; or
2. Temporary and/or permanent relocation into an off-site unit owned by the Housing Authority which meets their actual unit size or unit type needs.

Funding award is based on the oldest funding source used in the construction phase.

Residents who select this option shall be granted administrative transfer status. Such assignments shall be made according to the provisions of the Authority's Tenant Selection and Transfer Procedure (or successor Procedure) in ACOP .

#### **18-I.G. DETERMINATION OF PERMANENT UNIT MIX**

The Housing Authority shall determine the "post construction" unit mix of a development with a planned modernization or re-development program by considering several factors including: existing household composition, household composition of the Housing Authority site-specific waiting list, design limitations and applicable state and federal regulations.

#### **18-I.H. UNIT ASSIGNMENTS**

Temporary Relocations: In many cases, capital improvement programs will require the temporary relocation of residents prior to permanent re-housing. Temporary relocations will be into units owned by the Housing Authority. Units will be in the development where the resident resides (on-site) or at another location (off-site), according to the provisions below:

Temporary On-Site Relocation:

The Housing Authority shall temporarily relocate into on-site units all residents who do not request temporary off-site relocation, provided units of the appropriate size and type are available on-site. The Housing Authority reserves the right to temporarily relocate any and all residents off-site where habitable units of appropriate size and type do not exist on-site.

The Housing Authority shall assign available units of appropriate size (or most appropriate size, as allowed by this Procedure) and type to all residents who require on-site temporary relocation.

The Housing Authority shall attempt to minimize the number of temporary relocations per household, consistent with construction phasing, required scope of work, the number of residents requiring on-site relocation, and the number of available units of appropriate size and type when relocation occurs.

In some instances, because of the nature of the rehabilitation, emergency work, and/or improvement work to be performed in the resident's unit which, when completed, will allow the resident to return to his/her rehabilitated unit within a relatively short time (within two (2) months), it may be appropriate for the Housing Authority to relocate the resident to a "hotel" unit. A "hotel" unit is a vacant Housing Authority unit usually on-site which will accommodate the resident's household on a very temporary basis for no more than two (2) months. While the Housing Authority will make every effort to provide a unit of appropriate size to accommodate the entire household at their present development, it may not always be able to do so. The Housing Authority, however, will not relocate a household to a unit that results in severe overcrowding or lacks an accommodation reasonably required by a person with a disability.

#### Temporary Off-Site Relocations:

The Housing Authority shall temporarily relocate the residents into off-site units who request temporary off-site relocation.

The Housing Authority shall grant Administrative Transfer Status to residents who request off-site temporary relocation and assign them to an available public housing unit of appropriate size and type. Assignments of public housing units shall be done in accordance with the Housing Authority's Tenant Selection and Transfer Procedure (or successor Procedure) in the ACOP in effect at that time.

Resident households "in good standing" (against whom no eviction action has begun, including the service of a Notice to Terminate the Lease) who are temporarily relocated into units owned by the Housing Authority shall be required to sign an appropriate temporary relocation agreement.

Residents against whom the Authority has a pending lease termination or eviction, shall only be allowed to sign a "Use and Occupancy Agreement" for the unit.

#### Permanent Relocation:

In all cases, residents whose relocation is required due to a planned capital improvement program shall be guaranteed permanent re-housing in a unit owned by the Housing Authority. Permanent re-housing will be in the development where the resident resided (on-site) or at another location (off-site), according to the provisions below:

#### Permanent On-Site Relocations:

It is the Housing Authority's goal to permanently relocate into on-site units all residents

who do not request permanent off-site relocation.

The Housing Authority shall assign available units of appropriate size and type (or most appropriate size, as allowed by this Procedure) to all residents who request on-site permanent relocation in accordance with this RRP.

#### Permanent Off-Site Relocations:

The Housing Authority shall permanently relocate into off-site units those residents who request permanent off-site relocation.

Residents who are permanently relocated off-site shall waive all rights to relocation back to the development from which they have been relocated.

The Housing Authority shall grant Administrative Transfer Status to residents who request off-site permanent relocation and assign them to an available public housing unit of appropriate size and type. Assignments of public housing units shall be done in accordance with the provisions of the Authority's Tenant Selection and Transfer Procedure (or successor Procedure) in the ACOP in effect at that time.

Resident households "in good standing" who are assigned a permanent on-site or off-site unit shall be required to sign the standards lease offered by the applicable program.

Residents against whom the Housing Authority has a pending eviction action or lease termination shall only be allowed to sign a "Use and Occupancy Agreement" for the permanent assignment of housing until the action is resolved.

Residents who are assigned temporary and permanent units as a result of relocation shall have up to five (5) days after receiving a housing offer to accept the unit.

Residents who are given an on-site assignment of permanent re-housing may be required to participate in an Orientation Session for the newly-constructed development prior to the date they must move into their new unit.

Residents who are given an off-site assignment of temporary or permanent housing shall be informed about the availability of Neighborhood Orientation Sessions. Residents who are assigned units as a result of temporary or permanent relocation assistance shall have up to forty-five (45) calendar days in which to move into the assigned unit.

To the maximum extent possible, consistent with the requirements of the planned reconstruction program, the Housing Authority shall avoid the relocation of residents during the month of December.

The Housing Authority shall only temporarily or permanently relocate resident households into buildings, which are otherwise vacant, if the Housing Authority certifies that such relocation will not endanger the health and safety of the household.

The Housing Authority will consider the adverse effect on a household of increased rental obligation and/or non-citizen status in the relocation decision.

#### **18-I.I. REFUSALS OF OFFERS OF HOUSING**

Residents who are required to temporarily and/or permanently relocate for reconstruction may only reject assigned units based upon "good cause"

Refusal to sign applicable relocation/re-housing agreements shall constitute rejection without good cause.

Failure to accept an assignment of temporary or permanent housing within five (5) days of

the relocation officer shall constitute rejection without good cause.

Failure to move into a temporary and/or permanent unit within forty-five (45) calendar days of an acceptance of an assignment shall constitute rejection without good cause.

The Housing Authority shall initiate eviction action against all residents who reject without good cause a temporary or permanent relocation assignment.

If a resident is unable, due to a physical or mental disability, to accept an offer of housing then the resident shall so inform the Asset Manager in writing and submit a Request for Reasonable Accommodation pursuant to the Housing Authority's Reasonable Accommodation Procedure in the ACOP. (See Chapter 2, Fair Housing and Equal Opportunity, Part II, Policies Related to Persons with Disabilities for more information on the Reasonable Accommodation Procedure)

### **18-I.J. RELOCATION PAYMENTS**

The Authority shall pay the moving costs as required by law of a resident who must move either temporarily and/or permanently in one of the following three ways:

1. The Housing Authority will solicit proposals from moving companies and will assign staff to coordinate moves; or
2. If there are residents who need or want to move themselves, the Housing Authority will reimburse the resident for actual moving and related expenses provided appropriate documentation is presented and approved by the Housing Authority. Under no circumstances will the Housing Authority reimburse a resident an amount higher than what the Housing Authority would pay to move the resident; or
3. The resident household may elect to receive a fixed moving allowance based on room size in accordance with federal regulations.

Residents who must relocate shall choose the method by which they shall move. If the resident does not elect to have the Housing Authority perform the move, the resident shall have the option to obtain reimbursement from the Housing Authority for actual, reasonable moving and related expenses with the appropriate documentation (subject to #2 above).

The Housing Authority shall provide to the resident an advance payment of up to fifty percent (50%) of the Housing Authority's fixed amount of scheduled moving costs for the appropriate room size for hardship cases who wish to receive reimbursement for actual costs.

The Housing Authority shall not provide relocation payments to cover increased rental payments for residents who choose to temporarily or permanently relocate off-site.

Households, which are not required to relocate, shall not be eligible for relocation payments. The Housing Authority shall terminate all further relocation payments to residents who reject without good cause a temporary or permanent relocation assignment.

### **18-I.K. CONTINUED OCCUPANCY**

Nothing in this Procedure shall supersede any of the Housing Authority's established policies in the (ACOP) or successor Procedure in effect at the time of the relocation.

Qualified members of temporarily or permanently relocated households (except live-in

aides) shall have full rights to apply for head of household, co-head or spouse tenancy, if eligible, in the event that the head of household, co-head or spouse is unable to permanently remain in the unit due to death, incapacity, or reasons of health. Remaining qualified member shall be eligible for relocation assistance otherwise available to the prior head of household, co-head or spouse.

Residents who are evicted from a Housing Authority owned temporary unit shall forfeit all rights to further temporary or permanent relocation assistance, including the provision of relocation payments.

#### **18-I.L. GRIEVANCES AND APPEALS**

All residents who have received a notice of RRP, benefits, and requirements or who have been required to temporarily or permanently relocate under this Procedure shall have the same grievance and appeal rights as all other residents regarding Housing Authority action or inaction. (See Chapter 14 Grievances and Appeals for more information on the Grievances and Appeals process)

#### **18-I.M. COMPLAINTS OF DISCRIMINATION**

All residents who have received a notice of relocation policies, benefits, and requirements or who have been required to relocate under this Procedure shall have the same rights to file a complaint alleging discrimination as all other residents of the Housing Authority in accordance with federal law.

#### **18-I.N. WAIVER**

Any provision of this Procedure not required by law may be waived when the viability of the planned capital improvement program would suffer substantial hardship through its administration or when the program has experienced unanticipated circumstances, which merit resolution.

#### **18-I.O. AMENDMENTS**

The Housing Authority will periodically review and evaluate the effectiveness of this Procedure as it applies to the efficient management of construction, the fair and equitable treatment of residents and applicants, and conformity with applicable state and/or federal laws and regulations.

The Housing Authority may amend the RRP to improve its efficiency, to improve construction scheduling, to provide for greater fairness and equity towards residents and applicants, and to ensure full compliance with applicable state and/or federal laws and regulations.

All amendments to the RRP shall be submitted for review and comment to tenant organizations according to the provisions of applicable Housing Authority policies governing resident participation in the affairs of the Housing Authority.

Development-specific amendments to the RRP shall be submitted for review and comment to tenant organizations according to the provisions of applicable Housing Authority policies governing resident participation in the affairs of the Housing Authority.

All amendments to the RRP shall be submitted for appropriate agency approval as required by state and/or federal law or regulation.

## 18-I.P. DEFINITIONS

**Admissions and Continued Occupancy Procedure:** The Admissions and Continued Occupancy Procedure (ACOP) is the Housing Authority's written statement of policies used to carry out the housing program in accordance with federal law and regulations, and U.S. Department of Housing and Urban Development (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 Housing Authority'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 Annual Contributions Contract and all HUD-approved applications for program funding. The Housing Authority 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.

**Administrative Transfer Status:** Administrative Transfer Status is the status assigned to all residents who request on-site or off-site relocation assistance. The priority status given Administrative Transfers shall be done according to the provisions of the ACOP (or successor Procedure) in effect at the time.

**Good Cause:** A set of standards used by the Housing Authority to determine the need for special consideration in order to avoid a verifiable hardship when offering housing accommodations or when determining whether a rejection of an offer of an otherwise appropriate unit is justifiable.

The basis for the assignment or rejection must be clearly documented (as described below) and cannot be related to race, color, sex, sexual orientation, religion, or national origin. Examples of situations warranting special consideration in an assignment or in the rejection of a unit for good cause are:

1. The temporary hospitalization or on-duty military assignment of the head of household, co-head or spouse, or the household member necessary for the care of the head of household, co-head or spouse listed on the tenant lease.

### Acceptable documentation

- A statement on letterhead from a member of the professional staff at the hospital or health care facility (or clinic) indicating the name of the individual (must be the head of household, co-head or spouse or the household member necessary for the care of the head of household, co-head or spouse);
  - The date of admission; and
  - The date of anticipated discharge (if known) or an estimate of the anticipated length of confinement or a statement from the individual's Commanding Officer indicating the date the assignment began and anticipated length of active duty (if known).
2. The inaccessibility of public transportation to the night-time employment of head of household, co-head or spouse.



#### Acceptable documentation

- A statement from the employer, on company letterhead, indicating the specific hours of employment;
    - The date employment commenced;
    - Whether it is a permanent shift assignment; and
    - Whether the company provides transportation benefits.
3. The aggravation of a serious medically determinable impairment.

#### Acceptable documentation

- A statement from a health care provider, on letterhead, (physician, physician's assistant, or psychologist) which establishes the precise reasons for a particular type of unit (or unit location) is needed, or why acceptance of the unit already offered would aggravate a serious medically determinable impairment or condition.
  - The statement should not provide information regarding the nature of the condition, but should contain sufficient detail to establish why a particular type of unit (or unit location) is needed or why acceptance of the unit offered would aggravate the condition.
4. Inaccessibility to medically supportive institutions for elderly or disabled household member(s).

#### Acceptable documentation

- A statement from a member of the professional staff at a hospital or health care facility (clinic), on company letterhead, which certifies that the elderly or disabled household member(s) carries a diagnosis (the nature of the condition should not be revealed) which requires on-going regular or emergency treatment at the facility;
- The date when the individuals(s) began treatment at the facility;
- The frequency of treatment;
- The anticipated length of treatment; and
- Whether similar or identical care could be provided at other facilities in Merced County.

**Hardship Cases:** A hardship case involves a resident who has been deemed by the Housing Authority to be unable to afford the actual, reasonable costs of relocation due to limited financial means. Hardship cases shall be eligible for an advance payment of fifty percent (50%) of the fixed schedule of reimbursement for their actual, reasonable moving costs.

**Head of Household, co-head or spouse:** A head of household is a qualified member of a resident household who has primary responsibility for the occupancy of a dwelling unit. More than one qualified member may be a head of household, such as a co-head or spouse.

**Neighborhood Orientation Session:** A Neighborhood Orientation Session is available for all applicants and transfer applicants who wish to be oriented to any Housing Authority development prior to receiving or accepting an offer or assignment of housing.

This program acquaints applicants and transfer applicants with the various services available in Housing Authority developments and their surrounding neighborhoods, including public transportation services, social service agencies, health care facilities, playgrounds, schools, recreational facilities, stores, and churches.

**Occupancy Standards:** The Housing Authority will assign one bedroom for each two persons within the household, except in the following circumstances:

- Persons of the opposite sex (other than spouses, and children five years of age and under) will not be required to share a bedroom.
- Persons of different generations will not be required to share a bedroom.
- Live-in aides will be allocated a separate bedroom. No additional bedrooms will be provided for the live-in aide’s family.
- Single person families will be allocated a one bedroom.
- Foster children will be included in determining unit size.

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

<b>Bedroom Size</b>	<b>Minimum Number of Persons of Number</b>	<b>Maximum Number of Persons of Persons</b>
<b>1</b>	<b>1</b>	<b>2</b>
<b>2</b>	<b>2</b>	<b>4</b>
<b>3</b>	<b>3</b>	<b>6</b>
<b>4</b>	<b>4</b>	<b>8</b>
<b>5</b>	<b>5</b>	<b>10</b>

**Qualified Resident Household Member:** Qualified resident household members are those persons who are on the tenant lease according to the (ACOP) in effect at the time when a need for relocation is determined.

**Temporarily or Permanently Absent Household Member:** 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.

Generally an individual who is, or is expected to be, absent from the public housing unit for an accumulation of ninety (90) days 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 public housing unit for more than an accumulation of ninety (90) days is permanently absent and no longer a family member. Exceptions to this general Procedure are discussed below.

**Absent Students:** 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 Housing Authority 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 due to placement in foster care shall be considered members of the family. If a child has been placed in foster care, the Housing Authority will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

**Absent Head, Spouse, or Co-head:** An employed head, spouse, or co-head absent from the unit for more than ninety (90) consecutive days due to employment will continue to be considered a family member.

**Individuals Confined for Medical Reasons:** 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 Housing Authority 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:** The family must request Housing Authority approval for the return of any adult family members that the Housing Authority has determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter.

**Unit of Appropriate Size:** A unit of appropriate size is a dwelling unit whose number of bedrooms is sufficient to satisfy the requirements of the Housing Authority's Occupancy Standards for all qualified members of the household.

***Unit of Most Appropriate Size:*** A unit of most appropriate size is a dwelling unit that is the closest approximation to the unit size needs for the qualified members of the household in the development in which the household lives.

Units of most appropriate size may only be used for unit size determination for the relocation of residents who have requested only on-site temporary or permanent units, if units of appropriate size are not available and the Head of Household (co-head or spouse) signs a waiver of the Authority's Occupancy Standards.

## Chapter 19

### VIOLENCE AGAINST WOMEN ACT (VAWA)

#### Introduction

This chapter addresses the protections for victims of domestic violence, dating violence, sexual assault, or stalking who are applying for, or are the beneficiaries of, assistance under a Department of Housing & Urban Development (HUD) program covered by the Violence Against Women Act (VAWA), as amended. Notwithstanding the title of the statute, protections are not limited to women but cover victims of domestic violence, dating violence, sexual assault, or stalking, regardless of sex, gender identity, or sexual orientation. Consistent with the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a), victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age, and HUD Programs must be also operated consistently with HUD's Equal Access Rule, which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

The "AUTHORITY" may find instances of domestic violence, dating violence, sexual assault, or stalking against youth (those under the age of 18 years old) living in assisted household for which the family may need to exercise VAWA protections to protect the youth victim. The "AUTHORITY" should exercise the same documentation and confidentiality procedures in assisting a family in this situation.

Un-emancipated minors would not be eligible to sign leases under HUD programs. The "AUTHORITY" may consider contacting child welfare or child protective services, or law enforcement, when a minor claim to be a victim of domestic violence, dating violence, sexual assault, or stalking.

Guests, unassisted members, and live-in aides of the family are ineligible for VAWA protections that are available only to tenants and participants.

As a reasonable accommodation, a tenant/participant can request VAWA protections based on the grounds that the live-in aide is a victim of domestic violence, dating violence, sexual assault or stalking. In addition, other reasonable accommodations may be needed on a case-by-case basis.

In cases where a guest or unassisted member is a victim of domestic violence, dating violence, sexual assault or stalking, a tenant/participant cannot be evicted or have assistance terminated on the basis of the domestic violence, dating violence, sexual assault or stalking of the guest or unassisted member.

Unassisted members who are also on the lease, may qualify by the way of the lease for VAWA protections at 24 CFR 5.2005(c).

The VAWA Final Rule provides that an applicant for assistance or a tenant/participant receiving assistance under a covered housing provider may not be denied admission to, denied assistance under, terminated from participation in, or evicted from housing on the basis or as a *direct result* of the fact that the applicant or tenant/participant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant or tenant otherwise qualifies for admission, assistance, participation or occupancy.

In addition to prohibiting denial, termination, or eviction based on the fact that the applicant or tenant/participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, the VAWA Final Rule prohibits covered housing programs from denying assistance or admission, terminating participation in, or evicting a tenant based on an adverse factor, if the adverse factor is determined to be a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

However, if a denial or termination of assistance or eviction is required by federal statute, based on a particular adverse factor, the "AUTHORITY" must comply with that statute, even if the adverse factor is a direct result of domestic violence, dating violence, sexual assault or stalking. For example, if the applicant is subject to a lifetime registration requirement under a State sex offender registration program, the "AUTHORITY" must comply with section 578 of the Quality Housing and Work Responsibility Act of 1998 and deny the applicant admission, even if the sex offense(s) were a direct result of the fact that the applicant was a victim of domestic violence, dating violence, sexual assault or stalking.

On the surface, adverse factors may appear unrelated to domestic violence, dating violence, sexual assault, or stalking and may present legitimate reasons for denial, termination, and eviction. However, the presence of an adverse factor may be present during much of an abusive relationship, or it may present itself only when the victim is attempting to leave, or has left the abusive relationship. The following examples are provided to give the "AUTHORITY" a sense of many instances in which adverse factors might be the "direct result" of domestic violence, dating violence, sexual assault, or stalking. This list is neither exhaustive nor definitive:

- Poor credit history
- Poor rental history
- Criminal record
- Failure to pay rent

To trigger the direct result analysis, it is the responsibility of the applicant or tenant to:

1. Inform the "AUTHORITY" that they are a victim of domestic violence, dating violence, sexual assault, or stalking; and
2. Provide enough information for the "AUTHORITY" to make a determination regarding the adverse factor they are claiming was a direct result of domestic violence, dating violence, sexual assault, or stalking.

After the "AUTHORITY" receives this information, the "AUTHORITY" should consider the individual's statement and any possible supporting documentation in determining if an adverse factor was a direct result of domestic violence, dating violence, sexual assault, or stalking. If further information is necessary for this determination, the "AUTHORITY" may request additional supporting documentation from the applicant or tenant. However, any request for additional documentation must:

- a. Be in accordance with the "AUTHORITY" policies or practices,
- b. Not require evidence of the domestic violence, dating violence, sexual assault, or stalking other than as specified in 24 CFR 5.2007., and
- c. Not violate the VAWA Final Rule's confidentiality requirements or any other laws.

Where an applicant, tenant or participant fails to request VAWA protections, the "AUTHORITY" is not independently required to identify whether adverse factors are the direct result of domestic violence, dating violence, sexual assault, or stalking. The "AUTHORITY" may seek training, where available, from a trained third-party (such as an expert victim service provider) on reviewing VAWA documentation. Any communications with a third party must be done consistent with the VAWA rule's confidentiality requirements.

If the "AUTHORITY" believes any information is not clear, it should speak to the victim to try and clarify the information. After the "AUTHORITY" has received the information from the tenant or applicant, if necessary, clarified this information with the tenant or applicant, the "AUTHORITY" must make an objectively reasonable determination, based on all of the circumstances, whether the adverse factor is a direct result of the fact that the applicant or tenant/participant is a victim of domestic violence, dating violence, sexual assault, or stalking.

The "AUTHORITY" must notify the applicant or tenant if the "AUTHORITY" finds that the denial, termination, or eviction is not on the basis or as a "director result" of being a victim of domestic violence, dating violence, sexual assault, or stalking, and the applicant or tenant is thus denied admission to, denied assistance under, termination from participation in, or evicting from the housing. An applicant or tenant that disagrees with the finding should use the program's appeal procedures, if applicable.

In the case of a termination or eviction, the "AUTHORITY" must comply with the prohibition in 5.2005(d)(2) which provides:

The covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

Therefore, even if the direct result prohibition does not apply, the "AUTHORITY" cannot use that violation to terminate or evict the tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, if the covered housing provider does not ordinarily terminate or evict tenants for that violation.

#### **I.A. DEFINITIONS [24 CFR 5.2003]**

As used in VAWA:

- The term *bifurcate* means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any other individual, tenant or lawful occupant living in the household of that individual.
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent
- The term *stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's individual safety or the safety of others; or suffer substantial emotional distress.
- The term *actual or imminent threat* refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.
- The term *spouse or intimate partner of the victim* includes a person who is or has been in a social relationship or a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

*The term Covered Housing Program refers to the individual or entity under a covered housing program, as defined by each program in its regulations, that has a responsibility for the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities.*

- VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e *et seq.*).

## **I.B. NOTIFICATION**

The "AUTHORITY" of the County of Merced ("AUTHORITY") acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the "AUTHORITY"'s policies. Therefore, if



the "AUTHORITY" makes a determination to deny admission to an applicant family, the "AUTHORITY" will include in its notice of denial:

- A statement of the protection against denial provided by VAWA.
- A description of "AUTHORITY" confidentiality requirements.
- A request that an applicant wishing to claim this protection submit to the "AUTHORITY" documentation meeting the specifications below with her or his request for an informal hearing.

### **I.C. VAWA PROTECTIONS (24 CFR 5.2005)**

#### **Notification of Occupancy Rights under VAWA and Certification Form**

The "AUTHORITY" must provide notice to each of its applicants and HCV participants the notice of occupancy rights and the certification form as described:

- A "Notice of Occupancy Rights under the Violence Against Women Act," as prescribed and in accordance with directions provided by HUD, that explains the VAWA protections under this subpart, including the right to confidentiality, and any limitations on those protections; and
- A certification form, in a form approved by HUD, to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that:
  - States that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;
  - States that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under this subpart meets the applicable definition for such incident under §5.2003; and
  - Includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide.
- The "Notice of Occupancy Rights under the Violence Against Women Act," and certification form must be provided to an applicant or tenant no later than at each of the following times:
  - At the time the applicant is denied assistance or admission under a covered housing program;
  - At the time the individual is provided assistance or admission under the covered housing program;
  - With any notification of eviction or notification of termination of assistance; and
  - During the 12-month period following *December 16, 2016*, either during the annual recertification or lease renewal process, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.
- The "Notice of Occupancy Rights under the Violence Against Women Act," and certification form must be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency, signed August 11, 2000, and published in the FEDERAL REGISTER on August 16, 2000 (at 65 FR 50121)).
- For the public housing admission and occupancy requirements under 24 CFR part 960, the HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, sexual assault, or stalking, as provided in this subpart. Prohibited Basis for Denial of Termination of Assistance or Eviction.

- Generally an applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.
- Termination *on the basis of criminal activity*. A tenant in a covered housing program may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:
  - The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and;
  - The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.

### **Construction of Lease Terms and Terms of Assistance**

- An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:
  - A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or
  - Good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of the victim or threatened victim of such incident.

### **Limitations of VAWA Protections**

- Nothing in this section limits the authority of a covered housing provider, when notified of a court order, to comply with a court order with respect to:
  - The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or
  - The distribution or possession of property among members of a household.
- Nothing in this section limits any available authority of a covered housing provider to evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. However, the covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.
- Nothing in this section limits the authority of a covered housing provider to terminate assistance to or evict a tenant under a covered housing program if the covered housing provider can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to property of the covered housing provider would be present if that tenant or lawful occupant is not evicted or terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an "actual and imminent threat" if they meet the standards provided in the definition of "actual and imminent threat" in §5.2003.
- Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section should be utilized by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat, including, but

not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

## Emergency Transfer Plan

- For purposes of this section, the following definitions apply:
  - *Internal emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would not be categorized as a new applicant; that is, the tenant may reside in the new unit without having to undergo an application process.
  - *External emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would be categorized as a new applicant; that is the tenant must undergo an application process in order to reside in the new unit.
  - *Safe unit* refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe.
- The emergency transfer plan must provide that a tenant receiving rental assistance through, or residing in a unit subsidized under, a covered housing program who is a victim of domestic violence, dating violence, sexual assault, or stalking qualifies for an emergency transfer if:
  - The tenant expressly requests the transfer; and
  - A.) The tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying; or
  - B.) In the case of a tenant who is a victim of sexual assault, either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.
- The emergency transfer plan must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of tenants seeking transfers and individuals seeking placement on waiting lists.
- The emergency transfer plan must incorporate strict confidentiality measures to ensure that the covered housing provider does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.
- The emergency transfer plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available. The emergency transfer plan must describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available, and these policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.
- The emergency transfer plan must describe reasonable efforts the covered housing provider will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available. The plan must include policies for assisting a tenant who is seeking an external emergency transfer under VAWA

out of the covered housing provider's program or project, and a tenant who is seeking an external emergency transfer under VAWA into the covered housing provider's program or project. These policies may include:

- Arrangements, including memoranda of understanding, with other covered housing providers to facilitate moves; and
- Outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking.
- Nothing may preclude a tenant from seeking an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available.
- Where applicable, the emergency transfer plan must describe policies for a tenant who has tenant-based rental assistance and who meets the requirements of paragraph (e)(2) of this section to move quickly with that assistance.
- The emergency transfer plan may require documentation from a tenant seeking an emergency transfer, provided that:
  - The tenant's submission of a written request to the covered housing provider, where the tenant certifies that they meet the criteria in paragraph (e)(2)(ii) of this section, shall be sufficient documentation of the requirements in paragraph (e)(2) of this section;
  - The covered housing provider may, at its discretion, ask an individual seeking an emergency transfer to document the occurrence of domestic violence, dating violence, sexual assault, or stalking, in accordance with §5.2007, for which the individual is seeking the emergency transfer, if the individual has not already provided documentation of that occurrence; and
  - No other documentation is required to qualify the tenant for an emergency transfer.
- The covered housing provider must make its emergency transfer plan available upon request and, when feasible, must make its plan publicly available.
- The covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must be reported to HUD annually.

#### **I.D. DOCUMENTATION [24 CFR 5.2007]**

If an applicant or tenant represents to the covered housing provider that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking entitled to the protections under 24 CFR 5.2005 or remedies under 24 CFR 5.2009, the covered housing provider may request in writing the applicant or tenant submit within 14 business days:

- The HUD-5382 certification form, or
- A document:
  - Signed may be an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional or mental health professional (collectively "professional") from which the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse that is the ground for protection and remedies under this subpart, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003 and signed by the applicant or tenant

- A record of a Federal, State, tribal, territorial, or local law enforcement agency or court documenting the domestic violence, dating violence, sexual assault, or stalking, or
- At the discretion the covered housing provider, a statement or other evidence provided by the applicant or tenant.

The "AUTHORITY" is not required to ask for documentation when an individual presents a claim for VAWA protections; the "AUTHORITY" may instead choose to provide benefits to an individual based solely on the individual's verbal statement or other corroborating evidence. The "AUTHORITY" will document in a confidential manner, the individual's verbal statement or other corroborating evidence.

### **I.E. TIME FRAME FOR SUBMITTING DOCUMENTATION**

If an applicant or tenant does not provide the documentation requested within 14 business days after the date that the tenant receives a request in writing for such documentation from the covered housing provider, nothing in 24 CFR 5.2005 or 24 CFR 5.2009, which addresses the protections of VAWA, may be construed to limit the authority of the covered housing provider to:

- Deny admission by the applicant or tenant to the covered housing program;
- Deny assistance under the covered housing program to the applicant or tenant;
- Terminate the participation of the tenant in the covered housing program; or
- Evict the tenant, or a lawful occupant that commits a violation of a lease.

A covered housing provider may, at its discretion, extend the 14-business-day deadline. During the 14-business day period and any granted extensions of that time, no adverse actions, such as eviction or termination, can be taken against the individual requesting VAWA protection. The "AUTHORITY" will not schedule an eviction, grievance hearing, informal review, or informal hearing to take place during this time frame.

### **Remedies Available to Victims**

#### ***Lease bifurcation***

The "AUTHORITY" may terminate assistance to a household member who engages in criminal activity relating to domestic violence, dating violence, sexual assault or stalking against an affiliated individual or other individual:

Reasonable time to establish eligibility for assistance or find alternative housing:

- *Applicability.* The reasonable time to establish eligibility under a covered housing program or find alternative housing is specified in the Reasonable time to establish assistance or find alternative housing section below, or alternatively in the program-specific regulations governing the applicable covered housing program. Some covered housing programs may provide different time frames than are specified in the Reasonable time to establish assistance or find alternative housing section below, and in such cases, the program-specific regulations govern.
- *Reasonable time to establish assistance or find alternative housing.*
- If a covered housing provider exercises the option to bifurcate a lease as provided in the Applicability section above, and the individual who was evicted or for whom

assistance was terminated was the eligible tenant under the covered housing program, the covered housing provider shall provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:

- Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of; or
  - Establish eligibility under another covered housing program
  - Find alternative housing.
  - The 90-calendar-day period provided by Reasonable time to establish assistance or find alternative housing section above will not be available to a remaining household member if the statutory requirements for the covered housing program prohibit it. The 90-day calendar period also will not apply beyond the expiration of a lease, unless this is permitted by program regulations. The 90-calendar-day period is the total period provided to a remaining tenant to establish eligibility under the three options provided in this Reasonable time to establish eligibility for assistance or find alternative housing.
- The covered housing provider may extend the 90-calendar-day period in the Reasonable time to establish eligibility for assistance or find alternative housing section up to an additional 60 calendar days, unless prohibited from doing so by statutory requirements of the covered program or unless the time period would extend beyond expiration of the lease.

***Efforts to promote housing stability for victims of domestic violence, dating violence, sexual assault, or stalking.***

Covered housing providers are encouraged to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking to remain in their units or other units under the covered housing program or other covered housing providers, and for the covered housing provider to bear the costs of any transfer, where permissible.

**CONFLICTING DOCUMENTATION [24 CFR 5.2007(e)]**

In cases where the "AUTHORITY" receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the "AUTHORITY" may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (Item 2 and 3). The "AUTHORITY" must honor any court orders issued to protect the victim or to address the distribution of property.

If presented with conflicting certification documents (two or more forms HUD-50066) from members of the same household, the "AUTHORITY" will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(b)(2) or (3) and by following any HUD guidance on how such determinations should be made.

**DISCRETION TO REQUIRE NO FORMAL DOCUMENTATION [24 CFR 5.2007(d)]**

The "AUTHORITY" has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal

documentation of abuse in accordance with 24 CFR 5.2007(b).

If the "AUTHORITY" accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault or stalking, the "AUTHORITY" will document acceptance of the statement or evidence in the individual's file.

#### **FAILURE TO PROVIDE DOCUMENTATION [24 CFR 5.2007(c)]**

In order to deny relief for protection under VAWA, the "AUTHORITY" must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the "AUTHORITY" may allow, the "AUTHORITY" may deny relief for protection under VAWA.

#### **I.F. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]**

All information provided to a covered housing provider including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking (confidential information) shall be maintained in strict confidence by the Housing Provider.

- The covered housing provider shall not allow any individual administering assistance on behalf of the covered housing provider or any persons within their employ (*e.g.*, contractors) or in the employ of the covered housing provider to have access to confidential information unless explicitly authorized by the covered housing provider for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.
- The covered housing provider shall not enter confidential information described in of this section into any shared database or disclose such information to any other entity or individual, except to the extent that the disclosure is:
  - Requested or consented to in writing by the individual in a time limited release.
  - Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
  - Otherwise applicable by law

#### **Violence Against Women Act (VAWA) Self-Petitioner Verification Procedures**

Prior to VAWA, non-citizen victims of covered crimes were dependent on the good will of their abusers to obtain the authorized immigration status necessary to receive assisted housing. Section 214 of the Housing and Community Development Act of 1980 states that HUD may not allow financial assistance to ineligible non-citizens, but assistance must not be denied while verifying immigration status.

HUD has determined that self-petitioners can indicate that they are in "satisfactory immigration status" when applying for assistance or continued assistance from Section 214- covered housing providers. "Satisfactory immigration status" means an immigration status which does not make the individual ineligible for financial assistance. After verifying such immigration status in the Department of Homeland Security (DHS) Systematic Alien Verification for Entitlements (SAVE) System, PHAs will make a final

determination as to the self-petitioner's eligibility for assistance.

**Applicability to other VAWA Housing Protections.** Not every noncitizen victim who has been subjected to battery or extreme cruelty will qualify under these procedures. In order to qualify, the noncitizen victim must have been battered or subjected to extreme cruelty by their spouse or parent, who is a U.S. citizen or LPR. PHAs may receive a petition at any time, but submissions will most likely be related to a request for VAWA protections pursuant to 24 CFR Part 5 Subpart L (e.g. with a request for an emergency transfer or family breakup resulting from domestic violence, dating violence, sexual assault, or stalking). See PIH 2016-09. Once a PHA receives a self-petition (INS Form I-360 or I-130) or INS Form 797, it is prohibited from requesting any additional information from the VAWA self-petitioner, other than what is required below to complete the verification.

**Procedure.** When a PHA receives a self-petition or INS Form 797 Notice of Action, the PHA must initiate verification in the SAVE System:

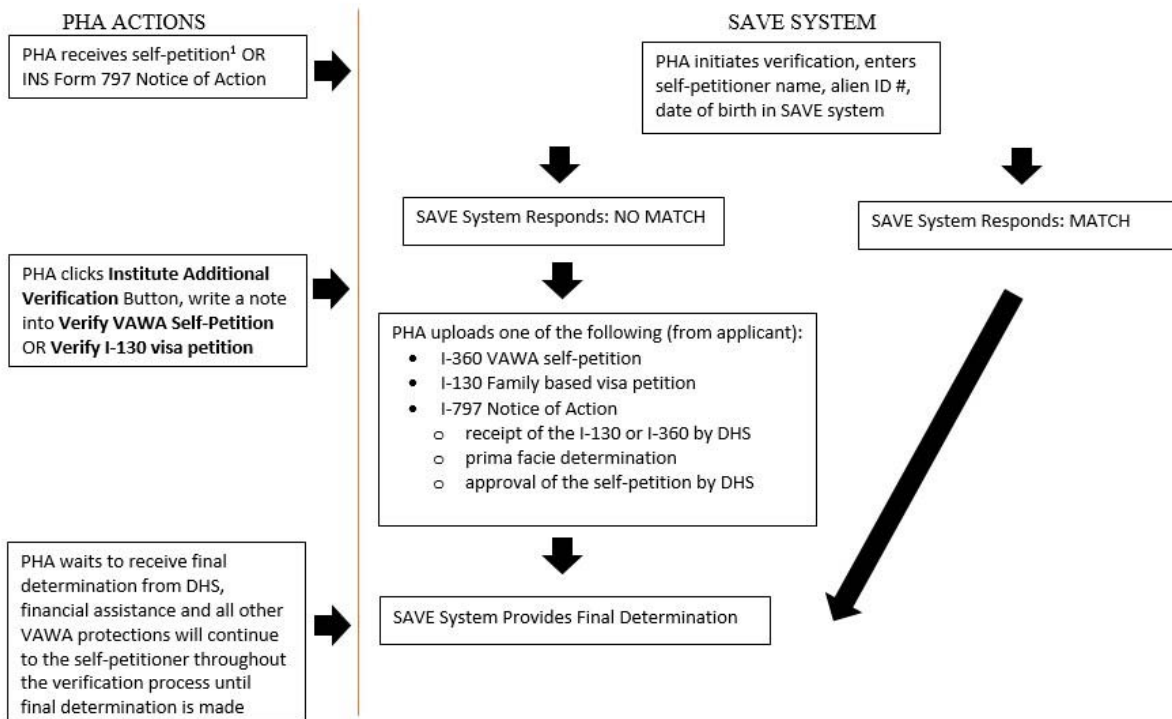
1. Enter self-petitioner name, alien ID number, and date of birth in the SAVE System. The system will provide one of the following responses:
  - If the SAVE system responds with a match, no further action is necessary at this time. Skip to step 3.
  - If the SAVE system responds "no match," the PHA must complete the following additional steps. Continue to step 2.
2. Push the button for "Institute Additional Verification." In the next screen, in the memo field, type "verify VAWA self-petition." If the documentation provided by the applicant is a form I-130, type in the memo field "verify I-130." Upload one of the following documents from applicant:
  - I-360 VAWA Self-Petition
  - I-130 Family-Based Visa Petition
  - I-797 Notice of Action

Steps undertaken by DHS:

- receipt of I-130 or I-360
  - prima facie determination
  - approval of self-petition
3. Wait for a final determination from the SAVE System. You will receive one of two confirmations: (1) the VAWA self-petition is verified, in which case the applicant is immediately eligible for housing and no evidence of battery or extreme cruelty shall be requested or collected; (2) the I-130 is verified, in which case the petitioner submitting a family-based visa petition must provide to the PHA any evidence of "battery or extreme cruelty." See 8 USC 1154(a)(1)(J). Housing assistance and all other VAWA protections will be granted to the self-petitioner throughout the verification process until a final determination of LPR status is made. If the final



determination is to deny the VAWA self-petition or LPR petition, the PHA must alert the petitioner and take actions to terminate voucher assistance or evict the petitioner from public housing in accordance with the existing public housing requirements.



**Effect On Other Laws (24 CFR 5.2011)**

- Nothing in this subpart 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, sexual assault, or stalking.
- All applicable fair housing and civil rights statutes and requirements apply in the implementation of VAWA requirements. See 24 CFR 5.105(a).

## **Appendix I ACRONYMS**

AAF – Annual Adjustment Factor

ACC – Annual Contributions Contract

ACOP – Admissions and Continued Occupancy Procedure

ADA – Americans with Disabilities Act of 1990

AIDS - Acquired Immune Deficiency Syndrome

AMI – Area Median Income

CDBG - Community Development Block Grant

CFR – Code of Federal Regulations

COP - Contract of Participation

CPI – Consumer Price Index

CSSR – Community Service and Self-Sufficiency Requirement

DMV – Department of Motor Vehicles

EID - Earned Income Disallowance

EIR - Established Income Range

EITC - Earned Income Tax Credit

EIV - Enterprise Income Verification

ELI – Extremely Low Income

FAQ – Frequently Asked Questions

FAS – Freely Assisted States

FDIC – Federal Deposit of Insurance Corporation

FHA – Fair Housing Act

FHA – Federal Housing Administration

FHEO – Fair Housing and Equal Opportunity

FICA – Federal Insurance Contributions Act

FMR – Fair Market Rent

FSS – Family Self Sufficiency

FTS - Full-time Student

FR – Federal Register

FYE – Fiscal Year End

GAO – Government Accounting Office

GR – Gross Rent

HCDA – Housing Community Development Act

HCVP – Housing Choice Voucher Program

HOP – Homeownership Option Program

HUD – U.S. Department of Housing and Urban Development

HURRA – Housing and Urban/Rural Recovery Act of 1983; resulted in most of the 194 HUD regulation changes to definition income, allowance, rent calculation

IPA – Independent Public Accountant

IRA – Individual Retirement Account

IRS - Internal Revenue Service

ITSP – Individual Training and Services Plan

JPEID – Jobs Plus Earned Income Disregard

JPPP – Job Plus Pilot Program

LAP – Language Access Plan

LEP - Limited English Proficiency

LI – Low Income

LIHTC – Low Income Housing Tax Credit

MASS – Management Operations Indicator

MOA – Memorandum of Agreement

MOU – Memorandum of Understanding

MOV – Methods of Verification

MSA – Metropolitan Statistical Area established by the United States Census Bureau

NAHASDA – Native American Housing Assistance and Self-Determination Act

OIG – Office of the Inspector General

OMB – Office of Management and Budget

PASS - Plan to Attain Self-Sufficiency

PCC – Program Coordinating Committee

PHA – Public Housing Authority

PHAS - Public Housing Assessment System

PIH – Public and Indian Housing

PII – Personally Identifiable Information

PMSA – A Primary Metropolitan Statistical Area established by the United States Census Bureau

PRE - Purchase Resale Entity

QC – Quality Control

QHWRA - Quality Housing and Work Responsibility Act of 1998

RAB – Resident Advisory Board

RAD – Rental Assistance Demonstration

REAC – Real Estate Assessment Center

RFP – Request for Proposal

RRP – Residential Relocation and Re-Housing Procedure S32

HOP – Section 32 Homeownership Option Program

SAVE – Systematic Alien Verification for Entitlements

SSA - Social Security Administration

SSI – Supplemental Security Income

SSN – Social Security Number

SWICA - State Wage Information Collection Agency

TANF - Temporary Assistance for Needy Families

TASS - Tenant Assessment Subsystem

TR – Tenant Rent

TSAP - Tenant Selection and Assignment Plan

TTP - Total Tenant Payment

TDD - Telecommunications Device for the Deaf

TTY - TeleType

UA – Utility Allowance

UFAS - Uniform Federal Accessibility Standards

UIV - Up-front Income Verification

UPCS - Uniform Physical Condition Standards

URP –Utility Reimbursement Payment

USC – United States Code

USCIS - U.S. Citizenship and Immigration Services formerly INS

VAWA – Violence Against Women Reauthorization Act of 2013

VG - Verification Guidance

VLI – Very Low Income

WIC – Women and Infant Children

## **GLOSSARY OF TERMS IN SUBSIDIZED HOUSING**

### **1937 ACT**

The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.)

### **ACCESSIBLE DWELLING UNITS**

When used with respect to the design, construction or alteration of an individual dwelling unit, means that the unit is located on an accessible route, and when designed, constructed, or altered, can be approached, entered, and used by individuals with a physical disability.

A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR 8.32 & 40, (the Uniform Federal Accessibility Standards)

### **ACCESSIBLE ROUTE**

For persons with a mobility impairment, a continuous, unobstructed path that complies with space and reach requirements of the Uniform Federal Accessibility Standards (UFAS). For persons with hearing or vision impairments, the route need not comply with requirements specific to mobility.

### **ADAPTABILITY**

Ability to change certain elements in a dwelling unit to accommodate the needs of disabled and non-disabled persons; or ability to meet the needs of persons with different types and degrees of disability.

### **ADMISSIONS AND CONTINUED OCCUPANCY PROCEDURE (ACOP)**

The Housing Authority must create written policies that are consistent with HUD regulations. Among these policies is the Housing Authority's Admissions and Continued Occupancy Procedure (ACOP). The ACOP must be approved by the Board of Commissioners of the Housing Authority.

### **ADA**

Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)

### **ADJUSTED INCOME**

Annual income, less allowable HUD deductions.

### **ADMISSION**

The date the family executes the Residential Dwelling Lease Agreement. This is the point when the family becomes a tenant.

### **ADULT**

Any person 18 years of age or over.

### **ANNUAL BUDGET AUTHORITY**

The maximum annual payment by HUD to a Housing Authority for a funding increment.

**ANNUAL CONTRIBUTIONS CONTRACT (ACC)**

A written contract between HUD and the Housing Authority. Under the contract, HUD agrees to provide funding for operation of the program, and the Housing Authority agrees to comply with HUD requirements for the program.

**ANNUAL INCOME**

The anticipated total annual income of an eligible family from all sources for the twelve (12) month period following the date of determination of income, computed in accordance with the regulations.

**APPLICANT (or applicant family)**

A family that has applied for admission to a program, but is not yet a tenant

**"AS-PAID" STATES**

States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

**ASSETS**

(See Net Family Assets.)

**BASELINE INCOME**

The annual income immediately prior to implementation of the disallowance of a person who is a member of a qualified family.

**BUDGET AUTHORITY**

An amount authorized and appropriated by Congress for payment to Housing Authority's under the program. For each funding increment in a Housing Authority program, budget authority is the maximum amount that may be paid by HUD to the Housing Authority over the ACC term of the funding increment.

**CHILD CARE EXPENSES**

Amounts paid by the family for the care of minors under thirteen (13) years of age where such care is necessary to enable a family member to be employed or for a household member to further his/her education.

**CO-HEAD**

An individual in the household who is equally responsible for the lease with the head of household. A family never has a co-head and a spouse and a co-head is never a dependent.

**CONTINUOUSLY ASSISTED**

An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program.

**COVERED FAMILIES**

Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

**COVERED PERSON**

A tenant, any member's of the tenant's household, a guest, or another person under the tenant's control.

**DEPENDENT**

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 18 years of age or over.

**DISABILITY ASSISTANCE EXPENSE**

Anticipated costs for care attendants and auxiliary apparatus for disabled family members, which enable a family member (including the disabled family member) to work.

**DISABLED PERSON**

A person who is any of the following:

A person who has a disability as defined in section 223 of the Social Security Act. (42 U.S.C.423).

A person who 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 ability to live independently could be improved by more suitable housing conditions.

A person who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

**DISABLED FAMILY**

A family whose head (including co-head), spouse or sole member is a person with a disability.

**DISPLACED PERSON/FAMILY**

A person or family displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under Federal disaster relief laws.

**DOMICILE**

The legal residence of the household head or spouse as determined in accordance with State and local law.

**DRUG**

Drug is a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802).

**DRUG-RELATED CRIMINAL ACTIVITY**

The illegal manufacture, sale, distribution, use, or the possession with intent to manufacture, sell, distribute or use, of a controlled substance (as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802).

**DRUG TRAFFICKING**

The illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute or use, of a controlled substance as defined in section 102 of the Controlled



Substances Act (21 U.S.C. 802).

**ELDERLY FAMILY**

A family whose head including co-head, spouse or sole member is at least 62 years of age.

**ELDERLY PERSON**

A person who is at least 62 years of age.

**ELIGIBILITY INCOME**

On May 10, 1984, regulations deleted eligibility income because "annual income" is now used for eligibility determination to compare to income limits.

**ELIGIBLE FAMILY**

A family is defined by the Housing Authority in this Administrative Plan, which is approved by HUD.

**EMANCIPATED MINOR**

A person under the 18 years of age and under who qualifies as an adult under state law.

**EXCESS MEDICAL EXPENSES**

Any medical expenses incurred by elderly or disabled families only in excess of three percent (3%) of annual income, which are not reimbursable from any other source.

**EXTREMELY LOW-INCOME FAMILY**

Avery low-income family whose annual income does not exceed the higher of: (1) The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or (2) Thirty (30) percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family income.

**FAMILY**

Family includes but is not limited to: an elderly family or single person as defined in 24 CFR 5.403(b), the remaining member of a tenant family, and a displaced person.

**FAMILY OF VETERAN OR SERVICE PERSON**

A family is a "family of veteran or service person" when: the veteran or service person (a) is either the head of household or is related to the head of the household; or (b) is deceased and was related to the head of the household, and was a family member at the time of death. The veteran or service person, unless deceased, is living with the family or is only temporarily absent unless they were (a) formerly the head of the household and is permanently absent because of hospitalization, separation, or desertion, or is divorced; provided, the family contains one or more persons for whose support they are legally responsible and the spouse has not remarried; or (b) not the head of the household but is permanently hospitalized; provided, that they are a family member at the time of hospitalization and there remain in the family at least two related persons.

**FAMILY SHARE**

The amount calculated by subtracting the housing assistance payment from the gross rent.

**FAMILY UNIT SIZE**

The size of the voucher issued to the family based on the Housing Authority’s subsidy standards.

**FLAT RENT**

Rent for a public housing dwelling unit that is based on the market rent. The market rent is the rent charged for comparable units in the private, unassisted rental market at which the Housing Authority could lease the public housing unit after preparation for occupancy.

**FOSTER CHILD CARE PAYMENT**

Payment to eligible households by State, local, or private agencies appointed by the State, to administer payments for the care of foster children.

**FULL-TIME STUDENT**

A person who is attending school or vocational training on a full-time basis.

**FUNDING INCREMENT**

Each commitment of budget authority by HUD to a Housing Authority under the consolidated Annual Contributions Contract (ACC) for the Housing Authority programs.

**GENDER IDENTITY**

Gender identity means actual or perceived gender-related characteristics.

**GROSS RENT**

The sum of the rent to owner and the utility allowance. If there is no utility allowance, rent to owner equals gross rent.

**GUEST**

For the purposes of determining whether an individual’s criminal activity is the responsibility of the resident, a guest is a person temporarily staying in the unit with the consent of a resident or other member of the household who has express or implied authority to so consent on behalf of the resident. The requirements of the lease apply to a guest as so defined.

**HEAD OF HOUSEHOLD**

The head of household is the person who assumes legal and financial responsibility for the household and is listed on the application as head.

**HOUSING AGENCY**

A state, county, municipality or other governmental entity or public body authorized to administer the program. The term “Housing Authority” includes an Indian Housing Authority (IHA).

**HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

Act in which the U.S. Housing Act of 1937 (sometimes referred to as the Act) was recodified, and which added the Section 8 Programs.

**HOUSING AUTHORITY ADMINISTRATIVE AND AGENCY PLAN**

The annual Administrative Plan and the 5-year Agency Plan as adopted by the Housing

Authority and approved by HUD in accordance with part 903 of this chapter.

**HUD REQUIREMENTS**

HUD requirements are issued by HUD headquarters as regulations, Federal Register notices or other binding program directives for all tenant-based housing.

**IMPUTED ASSET**

Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

**INCOME-BASED RENT**

The resident rent paid to the Housing Authority that is based on family income and the Housing Authority rental policies. The Housing Authority uses a percentage of family income or some other reasonable system to set income-based rents. The Housing Authority has broad flexibility in deciding how to set income-based rent for its residents. However, the income-based resident rent plus the Housing Authority's allowance for resident paid utilities may not exceed the total resident payment as determined by a statutory formula.

**IMPUTED INCOME**

HUD passbook rate times the total cash value of assets. This calculation is used when assets exceed \$5,000.

**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. This amount is included in family annual income and, therefore, reflected in the family rental contribution based on this income.

**INITIAL PAYMENT STANDARD**

The payment standard at the beginning of the Lease.

**INCOME**

Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

**INCOME FOR ELIGIBILITY**

Gross annual income.

**INCOME TARGETING**

The HUD admissions requirement that Housing Authority's not admit less than the number required by law of families whose income does not exceed thirty (30) percent of the area median income in a fiscal year.

**INDIAN**

Any person recognized as an Indian or Alaska Native by an Indian Tribe, the federal government, or any State.

**INDIAN HOUSING AUTHORITY (IHA)**

A housing agency established either: by exercise of the power of self-government of an Indian Tribe, independent of State law, or by operation of State law providing specifically for housing authorities for Indians.

**JURISDICTION**

The area in which the Housing Authority has authority under State and local law to administer the program.

**LANDLORD**

Refers to the HA, as either the legal owner of the property, or the owner's representative or managing agent as designated by the owner.

**LEASE**

A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family

**LEASE ADDENDUM**

See Tenancy Addendum

**LIVE-IN AIDE**

A person who resides with an elderly person or disabled person and who is determined to be essential to the care and well-being of the person and is not obligated for the support of the person. They would not be living in the unit except to provide necessary supportive services.

**LOCAL PREFERENCE**

A preference used by the Housing Authority to select among applicant families without regard to their federal preference status.

**LOW-INCOME FAMILY**

A family whose annual income does not exceed eighty percent (80%) of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. For admission to the voucher program, HUD may establish income limits higher or lower than 80 % of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

**MEDICAL EXPENSES**

Those total medical expenses, including medical insurance premiums that are anticipated during the period for which annual income is computed, and that are not covered by insurance. A deduction for elderly households only. These allowances are given when calculating adjusted income for medical expenses in excess of three percent (3%) of annual income.

**MEDICAL MARIJUANA**

Medical Marijuana refers to the use of cannabis or marijuana, including constituents of cannabis, THC and other cannabinoids, a physician recommended form of medicine of herbal therapy.

**MINIMUM RENT**

An amount established by the PHA between zero and \$50.

**MINOR**

A member of the family household (excluding foster children) other than the family head or spouse who is under 18 years of age.

**MIXED FAMILY**

A family with citizens and eligible immigration status and without citizens and eligible immigration status as defined in 24 CFR 5.504(b)(3).

**MONTHLY ADJUSTED INCOME**

1/12 of the Annual Income after Allowances or Adjusted Income.

**MONTHLY INCOME**

1/12 of the Annual Income.

**NATIONAL**

A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**NEAR-ELDERLY FAMILY**

A family whose head (including co-head), spouse, or sole member is at least 50, but less than 62 years of age; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62

**NEGATIVE RENT**

Now called Utility Reimbursement. A negative tenant rent results in a Utility Reimbursement Payment (URP).

**NET FAMILY ASSETS**

Value of equity in savings, checking, IRA and Keogh accounts, real property, stocks, bonds, and other forms of capital investment. The value of necessary items of personal property such as furniture and automobiles is excluded from the definition.

**NET FAMILY CONTRIBUTION**

Former name for tenant rent.

**NON-CITIZEN**

A person who is not a citizen or a national of the United States.

**OCCUPANCY STANDARDS [Now referred to as Subsidy Standards]**

Standards established by a Housing Authority to determine the appropriate number of bedrooms for families of different sizes and compositions.

**PERSONS WITH DISABILITIES**

Individuals with any condition or characteristic that renders a person an individual with a handicap as defined in 24 CFR 8.2.

**PREMISES**

The building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

**PREVIOUSLY UNEMPLOYED**

Includes a person who has earned, in the twelve (12) months previous to employment, no more than would be received for ten (10) hours of work per week for fifty (50) weeks at the established minimum wage.

**PROGRAM**

The Public Housing program under 24 CFR Part 960.

**QUALIFIED FAMILY**

A family residing in public housing whose annual income increases as a result of employment of a family member who was unemployed for one or more years prior to employment; or increased earnings by a family member during participation in any economic self-sufficiency program or on the job training program; or new employment or increased earnings of a family member, during or within six (6) months after receiving assistance, benefits or services under any state program for Temporary Assistance for Needy Families (TANF) funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local TANF agency and Welfare to Work programs. TANF includes income and benefits and services such as one time payments, wage subsidies and transportation assistance, as long as the total amount over a six (6) month period is at least \$500.

**QUALITY HOUSING AND WORK RESPONSIBILITY ACT OF 1998**

The Act, which amended the U.S. Housing Act of 1937 and is known as the Public Housing Reform Bill. The Act is directed at revitalizing and improving HUD's Public Housing and Housing Choice Vouchers (HCV) programs.

**PUBLIC ASSISTANCE**

Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by Federal, State, or local governments.

**PUBLIC HOUSING AGENCY (PHA)**

Any state, county, municipality or other governmental entity or public body which is authorized to administer the program (or an agency or instrumentality of such an entity), or any of the following:

- A consortia of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortia members)
- Any other public or private non-profit entity that was administering a Housing Choice Voucher tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a Housing Authority) on October 21, 1998
- For any area outside the jurisdiction of a Housing Authority that is administering a

tenant- based program, or where HUD determines that such Housing Authority is not administering the program effectively, a private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

**RECERTIFICATION**

Also referred to as reexamination. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next twelve (12) months if there are no additional changes to be reported. There are annual and interim recertifications.

**REMAINING MEMBER OF TENANT FAMILY**

Person left in assisted housing after other family members have left and become unassisted.

**RESIDENT**

Refers to participants in terms of their relation as a lessee to the Housing Authority as the landlord.

**RESIDENCY PREFERENCE**

A Housing Authority preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

**RESIDENCY PREFERENCE AREA**

The specified area where families must reside to qualify for a residency preference.

**RESPONSIBLE ENTITY**

For the Public Housing and Housing Choice Voucher assistance, project-based voucher assistance and moderate rehabilitation program, the responsible entity means the Housing Authority administering the program under an ACC with HUD. For all other Housing Choice Voucher programs, the responsible entity means the Housing Choice Voucher owner.

**SECURITY DEPOSIT**

A dollar amount, which can be applied to unpaid rent, damages or other amounts to the owner under the lease.

**SERVICE PERSON**

A person in the active military or naval service (including the active reserve) of the United States.

**SEXUAL ORIENTATION**

Sexual orientation means homosexuality, heterosexuality or bisexuality.

**SINGLE PERSON**

A person living alone or intending to live alone.

**SPECIAL ADMISSION**

Admission of an applicant that is not on the Housing Authority waiting list or without considering the applicant's waiting list position.

**SPORADIC INCOME**

Income that is temporary, occasional and nonrecurring including gifts that are excluded from annual income.

**SPOUSE**

The husband or wife of the head of the household.

**SUBSIDIZED PROJECT**

A multi-family housing project (with the exception of a project owned by a cooperative housing Mortgage Corporation or association) which receives the benefit of subsidy in the form of:

- Below-market interest rates pursuant to Section 221(d)(3) and (5) or interest reduction payments pursuant to Section 236 of the National Housing Act; or
- Rent supplement payments under Section 101 of the Housing and Urban Development Act of 1965; or
- Direct loans pursuant to Section 202 of the Housing Act of 1959; or
- Payments under the Section 23 Housing Assistance Payments Program pursuant to Section 23 of the United States Housing Act of 1937 prior to amendment by the Housing and Community Development Act of 1974;
- Payments under the Housing Choice Voucher Housing Assistance Payments Program pursuant to Section 8 of the United States Housing Act after amendment by the Housing and Community Development Act unless the project is owned by a Public Housing Agency;
- A Public Housing Project.

**SUBSIDY STANDARDS.**

Standards established by a Housing Authority to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

**SUBSTANDARD UNIT**

Substandard housing is defined by HUD for use as a federal preference.

**TENANCY ADDENDUM**

In the lease between the tenant and the owner, the lease language required by HUD.

**TENANT**

The person or persons (other than a live-in aide) who execute the lease as lessee of the dwelling unit.

**TENANT RENT**

The amount payable monthly by the family as rent to the unit owner (Housing Choice Voucher owner or Housing Authority in Public Housing).

**TOTAL TENANT PAYMENT (TTP)**

The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

**UNIT**

Residential space for the private use of a family.

**UNUSUAL EXPENSES**



Prior to the change in the 1982 regulations, this was the term applied to the amounts paid by the family for the care of minors under thirteen (13) years of age or for the care of disabled or handicapped family household members, but only where such care was necessary to enable a family member to be gainfully employed.

**UTILITIES**

Utilities mean water, electricity, gas, other heating, and refrigeration, cooking fuels, trash collection and sewage services. Telephone and cable service are not included as a utility.

**UTILITY ALLOWANCE**

If the cost of utilities (except telephone) including range and refrigerator, and other housing services for an assisted unit is not included in the Contract Rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a Housing Authority or HUD of a reasonable consumption of such utilities and other services for the unit by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthy living environment.

**UTILITY REIMBURSEMENT PAYMENT**

The amount the utility allowance exceeds the total tenant payment for the family occupying the unit.

**VERY LOW INCOME FAMILY**

A lower-income family whose annual income does not exceed fifty percent (50%) of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than fifty percent (50%) of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the Voucher Program.

**VETERAN**

A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released there from under conditions other than dishonorable.

**VIOLENT CRIMINAL ACTIVITY**

Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

**WAITING LIST ADMISSION**

An admission from the Housing Authority waiting list.

**WAITING LIST**

A list of families organized according to HUD regulations and Housing Authority Procedure that are waiting for subsidy to become available.

**WELFARE ASSISTANCE**

Income assistance from Federal or State welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families.

**WELFARE RENT**

This concept is used ONLY for pre-merger Certificate tenants who receive welfare assistance on an "AS- PAID" basis. It is not used for the Housing Choice Voucher Program.

If the agency does not apply a ratable reduction, this is the maximum a public assistance agency could give a family for shelter and utilities, NOT the amount the family is receiving at the time the certification or recertification is being processed. If the agency applies a ratable reduction, welfare rent is a percentage of the maximum the agency could allow.

## **GLOSSARY OF TERMS USED IN THE NON-CITIZENS RULE**

### **CHILD**

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

### **CITIZEN**

A citizen or national of the United States.

### **EVIDENCE**

Evidence of citizenship or eligible immigration status means the documents, which must be submitted to evidence citizenship or eligible immigration status.

### **HOUSING AUTHORITY**

A Public Housing Agency or an Indian Housing Authority or both.

### **HEAD OF HOUSEHOLD**

The adult member of the family who is the head of the household for purpose of determining income eligibility and rent.

### **HUD**

Department of Housing and Urban Development.

### **MIXED FAMILY**

A family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status.

### **NATIONAL**

A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

### **NON-CITIZEN**

A person who is not a citizen or a national of the United States.

### **PUBLIC HOUSING AUTHORITY**

A housing authority that operates Public Housing.

### **RESPONSIBLE ENTITY**

The person or entity responsible for administering the restrictions on providing assistance to non-citizens with ineligible immigration status (the Housing Authority).

### **SECTION 214**

Section 214 restricts HUD from making financial assistance available for non-citizens unless they meet one of the categories of eligible immigration status specified in Section 214.

**SPOUSE**

Spouse refers to the marriage partner, either a husband or wife, who is someone you need to divorce in order to dissolve the relationship. It includes the partner in a common-law marriage. It does not cover boyfriends, girlfriends, significant others, or "co-heads." "Co-head" is a term recognized by some HUD programs, but not by public and Indian housing programs.

**USCIS**

U.S. Citizenship and Immigration Services.