

*Housing Authority of the  
County of Merced*

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*Annual Plan for Fiscal Year:*

*10/1/2017 – 9/30/2018*

*PHA Code: CA023*

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

# Housing Authority of the County of Merced Annual Plan FY 2017-2018

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

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

**Definitions.**

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

A.	PHA Information.																										
A.1	<p> <b>PHA Name:</b> <u>Housing Authority of the County of Merced</u>                      <b>PHA Code:</b> <u>CA023</u>  <b>PHA Type:</b>   <input type="checkbox"/> Small   <input checked="" type="checkbox"/> High Performer  <b>PHA Plan for Fiscal Year Beginning:</b> (MM/YYYY): <u>10/2017</u>  <b>PHA Inventory</b> (Based on Annual Contributions Contract (ACC) units at time of FY beginning, above)  <b>Number of Public Housing (PH) Units</b> <u>421</u>    <b>Number of Housing Choice Vouchers (HCVs)</b> <u>2780</u>  <b>Total Combined</b> <u>3201</u>  <b>PHA Plan Submission Type:</b>   <input checked="" type="checkbox"/> Annual Submission                      <input type="checkbox"/> Revised Annual Submission </p> <p> <b>Availability of Information.</b> In addition to the items listed in this form, PHAs must have the elements listed below readily available to the public. A PHA must identify the specific location(s) where the proposed PHA Plan, PHA Plan Elements, and all information relevant to the public hearing and proposed PHA Plan are available for inspection by the public. Additionally, the PHA must provide information on how the public may reasonably obtain additional information of the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions. At a minimum, PHAs must post PHA Plans, including updates, at each Asset Management Project (AMP) and main office or central office of the PHA. PHAs are strongly encouraged to post complete PHA Plans on their official website. PHAs are also encouraged to provide each resident council a copy of their PHA Plans. </p> <p> <input type="checkbox"/> <b>PHA Consortia:</b> (Check box if submitting a Joint PHA Plan and complete table below) </p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th rowspan="2" style="width: 25%;">Participating PHAs</th> <th rowspan="2" style="width: 10%;">PHA Code</th> <th rowspan="2" style="width: 25%;">Program(s) in the Consortia</th> <th rowspan="2" style="width: 20%;">Program(s) not in the Consortia</th> <th colspan="2" style="width: 20%;">No. of Units in Each Program</th> </tr> <tr> <th style="width: 10%;">PH</th> <th style="width: 10%;">HCV</th> </tr> </thead> <tbody> <tr> <td>Lead PHA:</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td> </td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td> </td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Participating PHAs	PHA Code	Program(s) in the Consortia	Program(s) not in the Consortia	No. of Units in Each Program		PH	HCV	Lead PHA:																	
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Lead PHA:																											

<b>B.</b>	<b>Annual Plan Elements</b>
<b>B.1</b>	<p><b>Revision of PHA Plan Elements.</b></p> <p>(a) Have the following PHA Plan elements been revised by the PHA since its last <b>Annual PHA Plan</b> submission?</p> <p>Y N</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Statement of Housing Needs and Strategy for Addressing Housing Needs</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Financial Resources</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Rent Determination</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Homeownership Programs</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Safety and Crime Prevention</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Pet Policy</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Substantial Deviation</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Significant Amendment/Modification</p> <p>(b) The PHA must submit its Deconcentration Policy for Field Office Review. – <b>See Attachment A</b></p> <p>(c) If the PHA answered yes for any element, describe the revisions for each element below:</p> <p>PHA Plan Elements – <b>See Attachment B</b></p> <p>HCV/Section 8 Administrative Plan Changes – <b>See Attachment C</b></p> <p>ACOP Changes – <b>See Attachment D</b></p>
<b>B.2</b>	<p><b>New Activities.</b></p> <p>(a) Does the PHA intend to undertake any new activities related to the following in the PHA’s current Fiscal Year?</p> <p>Y N</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Hope VI or Choice Neighborhoods.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Mixed Finance Modernization or Development.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Demolition and/or Disposition.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Conversion of Public Housing to Tenant Based Assistance.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Conversion of Public Housing to Project-Based Assistance under RAD.</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Project Based Vouchers.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Units with Approved Vacancies for Modernization.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Other Capital Grant Programs (i.e., Capital Fund Community Facilities Grants or Emergency Safety and Security Grants).</p> <p>(b) If any of these activities are planned for the current Fiscal Year, describe the activities. For new demolition activities, describe any public housing development or portion thereof, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act under the separate demolition/disposition approval process. If using Project-Based Vouchers (PBVs), provide the projected number of project based units and general locations, and describe how project basing would be consistent with the PHA Plan.</p> <p><b>The HACM may issue a request for Project Based Vouchers to support the goal of expanding the supply of affordable housing. Such proposals will be considered on a case-by-case basis. The HACM may elect to Project-Base up to 20% of budget authority, as allowed by program regulations. Project-Based units may be located anywhere in the jurisdiction of the HACM.</b></p>

<p><b>B.3</b></p>	<p><b>Progress Report.</b></p> <p>Provide a description of the PHA’s progress in meeting its Mission and Goals described in the PHA 5-Year Plan.</p> <ul style="list-style-type: none"> <li>• <b>Goal 1 – Preserve and expand HACM’s affordable housing programs.</b> <ul style="list-style-type: none"> <li>○ Applied for and received 11 additional VASH vouchers, totaling 66 VASH voucher to date.</li> <li>○ Requested that 11 PBV HUD-VASH Vouchers be allocated to Gateway Terrace II.</li> </ul> </li> <li>• <b>Goal 3 – Strengthen partnerships with City and County to develop and maintain affordable housing, furthering HACM’s mission.</b> <ul style="list-style-type: none"> <li>○ Actively participate in the City of Merced Housing Element Plan.</li> <li>○ Actively participate in the Los Banos Housing Element Plan.</li> <li>○ Actively participate in the Continuum of Care.</li> <li>○ Utilize all opportunities to promote affordable housing needs in the community.</li> </ul> </li> <li>• <b>Goal 4 – Improve the quality of assisted housing.</b> <ul style="list-style-type: none"> <li>○ Maintained High Performer status in both Public Housing and Housing Choice Voucher.</li> <li>○ Received the “2017 Housing Choice Voucher Program of the Year” from HUD.</li> <li>○ Utilized CFP funds to rehab and modernize Public Housing units. <ul style="list-style-type: none"> <li>– Roof Replacements</li> <li>– HVAC Updates</li> <li>– Unit Modifications (including ADA improvements)</li> <li>– Comprehensive tree trimming</li> </ul> </li> </ul> </li> <li>• <b>Goal 5 – Promote and secure services for Housing Authority residents and participants.</b> <ul style="list-style-type: none"> <li>○ Increased FSS participation.</li> <li>○ Recognized 1 FSS graduate.</li> </ul> </li> <li>• <b>Goal 6 – Strengthen the agency’s financial position and its ability to respond to shifting economic conditions.</b> <ul style="list-style-type: none"> <li>○ Stabilized operational costs and staffing levels.</li> <li>○ Streamlined operational processes. <ul style="list-style-type: none"> <li>– New online application/tracking system</li> </ul> </li> </ul> </li> </ul>
<p><b>B.4.</b></p>	<p><b>Most Recent Fiscal Year Audit.</b></p> <p>(a) Were there any findings in the most recent FY Audit?</p> <p>Y N  <input type="checkbox"/> <input type="checkbox"/></p> <p>(b) If yes, please describe:</p>
<p><b>Other Document and/or Certification Requirements.</b></p>	
<p><b>C.1</b></p>	<p><b>Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan</b></p> <p><u>Form 50077-ST-HCV-HP</u>, <i>Certification of Compliance with PHA Plans and Related Regulations</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p> <p style="text-align: center;"><b>See Attachment E</b></p>
<p><b>C.2</b></p>	<p><b>Civil Rights Certification.</b></p> <p><u>Form 50077-ST-HCV-HP</u>, <i>Certification of Compliance with PHA Plans and Related Regulations</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p> <p style="text-align: center;"><b>See Attachment F</b></p>
<p><b>C.3</b></p>	<p><b>Resident Advisory Board (RAB) Comments.</b></p> <p>(a) Did the RAB(s) provide comments to the PHA Plan?</p> <p>Y N  <input checked="" type="checkbox"/> <input type="checkbox"/></p> <p>If yes, comments must be submitted by the PHA as an attachment to the PHA Plan. PHAs must also include a narrative describing their analysis of the RAB recommendations and the decisions made on these recommendations.</p> <p style="text-align: center;"><b>See Attachment G</b></p>

C.4	<p><b>Certification by State or Local Officials.</b></p> <p><a href="#">Form HUD 50077-SL</a>, <i>Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p> <p style="text-align: center;"><b>See Attachment H</b></p>
D	<p><b>Statement of Capital Improvements.</b> Required in all years for all PHAs completing this form that administer public housing and receive funding from the Capital Fund Program (CFP).</p>
D.1	<p><b>Capital Improvements.</b> Include a reference here to the most recent HUD-approved 5-Year Action Plan (HUD-50075.2) and the date that it was approved by HUD.</p> <p style="text-align: center;"><b>See Attachment I</b></p>

**10.6 SELECTION FROM THE WAITING LIST [24 CFR 96.202(B)]**

The Merced Housing Authority shall follow the statutory requirement that at least 40% of newly admitted families in any fiscal year be families whose annual income is at or below 30% of the area median income. To insure this requirement is met we shall quarterly monitor the incomes of newly admitted families and the incomes of the families on the waiting list.

If it appears that the requirement to house extremely low-income families will not be met, we will skip higher income families on the waiting list to reach extremely low-income families.

If there are not enough extremely low-income families on the waiting list we will conduct outreach on a non-discriminatory basis to attract extremely low-income families to reach the statutory requirement.

**10.7 DECONCENTRATION POLICY AND INCOME MIXING [24 CFR 903.1 and 903.2]**

The MHA's admission policy is designed to provide for deconcentration of poverty and income-mixing by bringing higher income residents into lower income developments and lower income residents into higher income developments.

A resident's gross annual income is used to determine income limits at admission and for income-mixing purposes.

**10.8 DECONCENTRATION AND INCOME-MIXING GOALS**

MHA's deconcentration and income-mixing goal, in conjunction with the requirement to target at least 40 percent of new admissions to public housing in each fiscal year to "extremely low-income families," will be to admit higher income families to lower income developments, and lower income families to higher income developments.

Deconcentration will apply to transfer families as well as applicant families.

**10.9 DEVELOPMENT DESIGNATION METHODOLOGY [24 CFR 903.2(c)(1)]**

MHA will determine on an annual basis the average income of all families residing in its covered developments.

MHA will then determine the average income of all families residing in each covered development.

MHA will then determine whether each covered developments falls above, within, or below the Established Income Range (EIR).

The EIR is 85 percent to 115 percent (inclusive of 85 percent and 115 percent) of the MHA-wide average income for covered developments.

MHA will then determine whether or not developments outside the EIR are consistent with local

goals and strategies in MHA Agency Plan.

MHA may explain or justify the income profile for these developments as being consistent with and furthering two sets of goals:

1. Goals of deconcentration of poverty and income mixing (bringing higher income residents into lower income developments and vice versa); and
2. Local goals and strategies contained in the MHA Annual Plan.

### **10.10 DECONCENTRATION POLICY**

If, at annual review, there are found to be development(s) with average income above or below the EIR, and where the income profile for a general occupancy development above or below the EIR is not explained or justified in MHA Plan, the MHA shall adhere to the following policy for deconcentration of poverty and income mixing in applicable developments.

Skipping a family on the waiting list to reach another family in an effort to further the goals of MHA's deconcentration policy:

- If a unit becomes available at a development below the EIR, the first eligible family on the waiting list with income above the EIR will be offered the unit. If that family refuses the unit, the next eligible family on the waiting list with income above the EIR will be offered the unit. The process will continue in this order. For the available unit at the development below the EIR, if there is no family on the waiting list with income above the EIR, or no family with income above the EIR accepts the offer, then the unit will be offered to the next family regardless of income.
- If a unit becomes available at a development above the EIR, the first eligible family on the waiting list with income below the EIR will be offered the unit. If that family refuses the unit, the next eligible family on the waiting list with income below the EIR will be offered the unit. The process will continue in this order. For the available unit at the development above the EIR, if there is no family on the waiting list with income below the EIR, or no family with income below the EIR accepts the offer, then the unit will be offered to the next family regardless of income.

Skipping of families for deconcentration purposes will be applied uniformly to all families.

### **10.11 DECONCENTRATION INCENTIVES**

The ease of the applications process, coupled with rents capped at affordable levels, will attract more low - income applicants. Those higher - income applicants will mix with the large number of very - low - income applicants already attracted to the agency waiting lists. Units will then be filled from the mixed - income waiting list when they become available, which will create an income mix within projects.

Affordable flat rents should encourage savings and discourage working families from moving prematurely (before they are able to achieve financial independence). This



should serve as an example of achievement to those who want to better themselves, and help preserve the desirable income mix.

A family has the sole discretion whether to accept an offer of a unit made under deconcentration policy. MHA shall not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under this deconcentration policy. However, MHA shall uniformly limit the number of offers received by applicants, described in 10. Tenant Selection Plan.

If the average incomes of all general occupancy developments are within the Established Income Range, MHA will be considered to be in compliance with the deconcentration agreement.

Nothing in the deconcentration policy relieves MHA of the obligation to meet the income targeting requirements.

#### **10.12 PROMOTION OF INTEGRATION**

Beyond the basic requirement of nondiscrimination, MHA shall affirmatively further fair housing to reduce racial and national origin concentrations.

MHA shall not require any specific income or racial quotas for any development or developments.

MHA shall not assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, creed, national or ethnic origin, age, familial or marital status, handicap, disability, gender identity or sexual orientation for purposes of segregating populations.

#### **10.13 OFFER OF A UNIT**

When the Merced Housing Authority discovers that a unit will become available, we will contact the first family on the waiting list who has the highest priority for this type of unit or development and whose income category would help to meet the deconcentration goal and/or the income targeting goal.

The Merced Housing Authority will contact the family first by telephone to make the unit offer. If the family cannot be reached by telephone, the family will be notified of a unit offer via first class mail. The family will be given five (5) business days from the date the letter was mailed to contact the Merced Housing Authority regarding the offer.

The family will be offered the opportunity to view the unit. After the opportunity to view the unit, the family will have two (2) business days to accept or reject the unit. This verbal offer and the family's decision must be documented in the tenant file.

CA023 – Housing Authority of the County of Merced (HACM)

## B.1 (a) ANNUAL PLAN ELEMENTS

### 1. Statement of Housing Needs and Strategy for Addressing Housing Needs

Data used to assist in determining local housing needs have come from multiple sources which include the HACM’s Waiting List, City of Merced- Consolidated Plan, the Housing Element Plan, and Merced County General Plan.

The HACM has analyzed the housing needs of low, very low and extremely low-income families who reside the HA’s jurisdiction. The housing needs of the very low and extremely low income families who reside in the community continue to be great. According to current U.S. Census Bureau information 35.1% of the population is living below the poverty level. In addition Merced County unemployment leads the state and the nation with 18.8% unemployment.

See Housing Needs from HACM’s wait list below.

<b>Housing Needs of Families on HCV/Section 8 Waiting List</b>		
	# of families	% of total families
Waiting list total	154	
Extremely low income <=30% AMI	129	83.8%
Very low income (>30% but <=50% AMI)	16	10.4%
Low income (>50% but <80% AMI)	9	5.8%
Families with children	95	61.69%
Elderly families	0	0%
Families with Disabilities	3	1.9%
Race/ethnicity: White	54	35.1%
Race/ethnicity: Black	52	33.8%
Race/ethnicity: Asian	18	11.7%
Race/ethnicity: Hispanic	80	51.9%

On March 15, 2015, the HACM opened enrollment for the HCV/Section 8 Program waiting list. Prior to this it had been closed since July 20, 2009. Enrollment was limited to 750 applications. During a seven (7) hour period individuals were provided assistance and 750 completed applications were submitted. It was estimated that an additional 1,000 individuals were still in line but unable to submit an application.

On February 8, 2016, the HCV/Section 8 program waiting list opened again. The application process utilized an “online process” and results were overwhelming. Over 1,900 applications were received in a forty-five (45) minute span.

These overwhelming results indicate the high demand for affordable housing in the community. It is the intent of the HACM to maintain shorter waitlists, and open it more frequently in an effort to maintain more current data.

CA023 – Housing Authority of the County of Merced (HACM)

## **B.1(a) ANNUAL PLAN ELEMENTS**

### **2. Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions**

The HACM has established the following plans:

- 1) Public Housing – Admissions & Occupancy Plan
- 2) HCV/Section 8 – Administrative Plan

The purpose of each plan is to establish policies for carrying out the programs in a manner consistent with HUD requirements and local objectives.

The plans include a variety of policies including; eligibility, admissions and maintaining waitlists for the Public Housing and HCV Programs. Plans also include provisions for deconcentration of poverty, and income mixing. These policies conform to HUD guidelines for new admissions and include targeting of extremely-low income families.

It is the HACM's policy to provide for deconcentration of poverty and encourage income mixing by bringing higher income families into lower income developments and lower income families into higher income developments. HACM's may skip families on the waiting list to reach other families with lower or high income. Additionally, the HACM may use flat rents to encourage higher income eligible residents to lease or remain in public housing units. This is accomplished in a uniform and non-discriminatory manner.

The HACM will affirmatively market all housing to all eligible income eligible groups. Lower income residents will not be steered toward lower income developments and higher income people will not be steered toward higher income developments.

Centralized waiting lists are maintained for Section 8 Tenant-Based Assistance and for the four (4) Public Housing/Low Income AMPs within the HACM jurisdiction. Waiting Lists contain pertinent applicant information, including family size, local ranking preferences for which they have claimed and are deemed eligible for (Independent Living Skills; Involuntary Displacement; Homeless Preference, Veteran Preference; Victim of Domestic Violence, etc.). All waiting lists are updated and purged on a regular basis in order to maintain an accurate record of the households requesting housing assistance. An applicant household determined ineligible will be notified promptly in writing of the determination and informed of the right to an informal review.

#### **ACOP**

Section 8.0 Eligibility for Admission  
Section 9.0 Managing Waiting List  
Section 10 Tenant Selection (Deconcentration)

#### **HCV Admin Plan**

Chapter 2 Eligibility for Admission  
Chapter 3 Pre-Application Process  
Chapter 4 Waiting List and Tenant Selection

CA023 – Housing Authority of the County of Merced (HACM)

**B.1(a) ANNUAL PLAN ELEMENTS****3. Financial Resources**

<b>Financial Resources: Planned Sources and Uses</b>		
<b>Sources</b>	<b>Planned \$</b>	<b>Planned Uses</b>
<b>1. Federal Grants (FY 2017 grants)</b>		
a) Public Housing Operating Fund	1,251,020	Public Housing
b) Public Housing Capital Fund 2016 <b>CA01P023501-17</b>	724,104	Unit Rehab
c) HOPE VI Revitalization		
d) HOPE VI Demolition		
e) Annual Contributions for Section 8 Tenant- Based Assistance	18,270,700	Housing Choice Voucher Rental Assistance
f) Resident Opportunity and Self-Sufficiency Grants	54,400	Ross Coordinator
g) Community Development Block Grant		
h) HOME		
Other Federal Grants (list below)		
USDA – RD Rental Assistance	381,583	
<b>2. Prior Year Federal Grants (unobligated funds only) (list below)</b>		
j) Resident Opportunity and Self-Sufficiency Grants		
Public Housing Capital Fund 2015	714,098	
<b>3. Public Housing Dwelling Rental Income</b>	2,280,000	Public Housing Operations
<b>4. Other income (list below)</b>		
Shelter Plus Care	55,500	Rental Assistance
VASH	54,000	Rental Assistance
<b>5. Non-federal sources (list below)</b>		
State Programs	1,228,770	Operations
Local	2,578.859	Operations
<b>Total resources</b>	<b>27,593,034</b>	

CA023 – Housing Authority of the County of Merced (HACM)

## **B.1(a) ANNUAL PLAN ELEMENTS**

### **4. Rent Determination**

Public Housing residents are provided the choice of paying an Income-Based or a Flat Rent at initial Lease-Up and at Annual Reexamination. The HACM has established the Minimum Rent at \$50 unless the household qualifies for an exemption, as requested by the client and verified by the HACM.

Per PIH Notice 2014-12, the PHA is required to increase the established Public Housing Flat Rents to no lower than 80 percent of Fair Market Rent (FMR) in order to be in compliance with HUD requirements.

Under the HCV Program, the HACM establishes Payment Standards based upon the HUD-published Fair Market Rents. The HACM reviews proposed rents to ensure they meet the rent reasonableness criteria set by HUD and that Contract Rents are reasonable in relation to rents currently being charged for comparable units in the private, unassisted market. The tenant's portion of rent is determined by their income.

ACOP – Section 13 Determination of Total Tenant Payment and Tenant Rent  
HCV Admin Plan – Chapter 6 Factors Related to Total Tenant Payment Determination

DRAFT

CA023 – Housing Authority of the County of Merced (HACM)

**B.1(a) ANNUAL PLAN ELEMENTS**

**5. Homeownership Programs**

HACM created a Homeownership Program (HOP) for tenants residing in public housing. The Homeownership Program was established to provide an opportunity for low income families who ordinarily could not afford to buy their own homes, to do so. Families are required to meet normal eligibility requirements for public housing and must, in addition, demonstrate the potential to achieve homeownership status. Such potential involves an income which is stable and sufficient to pay operating costs and build up equity towards the required down payment. Prospective tenants are required to attend a variety of classes which include homeownership, credit counseling, home maintenance, how to maintain a loan, etc.

To date, 95 families have benefited from the program and achieved homeownership. Currently there are 3 available homes for prospective families.

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## **B.1(a) ANNUAL PLAN ELEMENTS**

### **6. Safety and Crime Prevention**

The HACM partners with local law enforcement agencies (Police, Sheriffs and District Attorney) to determine the safety needs of the residents and community, working towards a mutual goal of ensuring and improving the safety of residents. The HACM has undertaken partnerships with local organizations to encourage the prevention of crime and/or drug activities, especially targeting at-risk youth.

Measures taken by the HACM include:

- Resident reports
- HA employee reports
- Police reports
- Encouragement for residents to form volunteer neighborhood watch programs
- Working with law enforcement to analyze crime statistics over time for crimes committed “in and around” public housing authority
- Analysis of vandalism and removal of graffiti
- Safety and security survey of residents

### **Violence Against Women Act (VAWA)**

- The HACM supports the goals of the VAWA Amendments and complies with all requirements and will continue to administer its housing programs in ways that support and protect residents (including Section 8 Housing Choice Voucher program participants) and applicants who may be victims of domestic violence, dating violence, sexual assault or stalking.
- The HACM will not take any adverse action against a resident/participant or applicant solely on the basis of her or his being a victim of such criminal activity, including threats of such activity. “Adverse action” in this context includes denial or termination of housing assistance.
- The HACM will not subject a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard of lease compliance than other residents.
- The HACM has developed policies and procedures to comply with the requirements of VAWA. The victim or threatened victim of an incident or incidents of actual or threatened domestic violence, dating violence or stalking will not be construed as a serious or repeated violation of the lease, and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence. The HACM may terminate the assistance/tenancy to remove a lawful occupant or tenant who engages in criminal acts or threatened acts of violence or stalking to family members or others without terminating the assistance or evicting victimized lawful occupants. The HACM may honor court orders regarding the right of access

or control of the property and orders issued to protect the victim and to address the distribution or possession of property among household members where the family “breaks up”. There is no limitation on the ability of the HACM to terminate assistance for other good cause unrelated to the incident or incidents of domestic violence, dating violence, or stalking, other than the victim may not be subject to a “more demanding standard” than non-victims. There is no prohibition on the HACM terminating assistance if it “can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant’s (victim’s) assistance is not terminated”. Any protections provided by law which give greater protection to the victim are not superseded by these provisions. The HACM may require certification by the victim of victim status on such forms as the HACM and/or HUD shall prescribe or approve.

ACOP – Section 23 Violence Against Women Act  
HCV Admin Plan – Chapter 17 Violence Against Women Act

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## **B.1(a) ANNUAL PLAN ELEMENTS**

### **7. Pet Policy**

The HACM has the discretion to decide when and how the keeping of pets will be allowed in public housing units, as described in Chapter 18 of the Admission and Continued Occupancy Policy.

HACM's policy describes on the keeping of pets in and on properties owned and operated by the HACM. The HACM's Pet Policy is related to the legitimate interest of providing decent, safe, and sanitary living environment for all tenants, to protecting and preserving the physical condition of HA property, and to the financial interest of the HA. All pets must be registered with the HACM. Permitted pets are domesticated dogs, cats or birds. No other type of pet shall be allowed or kept on HA property, including but not limited to, illegal, exotic, or endangered animals, reptiles, arachnid, etc.

The intent of the HACM Pet Policy is to grant individual authorization to possess a pet within their unit and to allow the HA to reasonably impose additional deposits to cover potential costs incurred for damages cause to PHA property. Nothing in the Pet Policy shall imply approval or acceptance of such pet ownership to the extent of passing liability to the HACM (including liability, judgments, expenses (including costs and attorney's fees), or claims by third parties in relation to the resident's pet(s).

The HACM's Pet Policy does not apply to animals that are used to assist persons with disabilities. Assistive animals are allowed in all Public Housing facilities with no restriction other than those imposed on all tenants to maintain their units and associated facilities in a decent, safe and sanitary manner and to refrain from disturbing their neighbors.

ACOP – Section 21.0 Pet Policy

CA023 – Housing Authority of the County of Merced (HACM)

## **B.1(a) ANNUAL PLAN ELEMENTS**

### **8. Substantial Deviation – 5-Year Plan**

A “Substantial Deviation” from the 5-Year Plan is an overall significant change in the direction of the Agency pertaining to the Authority’s goals and objectives. This includes adding to the Agency’s goals and objectives.

### **9. Significant Amendment/Modification – Annual Plan**

The “Significant Amendment or Modification” to the Annual Plan is a change in a policy or policies pertaining to the operation of the Authority. This includes the following:

- Changes to rent, admission policies or organization on the waiting list.
- Additions of non-emergency work items in excess of 10% of the total Capital Fund Program budget (items not included in the current Annual Plan Statement or 5-Year Action Plan) or change in current Annual Statement or 5-Year Action plan or change in use of replacement reserve funds under the Capital Fund Program.
- Any changes with regard to demolition or disposition, designation, homeownership programs or conversion activity.

Any “significant amendment or modification” to the plan would require a revised plan that has met the full public process requirement.

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# Housing Authority of the County of Merced

## Administrative Plan for the Housing Choice Voucher Program



Building opportunities for tomorrow

**Revision Date: October 1, 2017**



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## Chapter 1

### **STATEMENT OF POLICIES AND OBJECTIVES INTRODUCTION**

The Section 8 Program was enacted as part of the Housing and Community Development Act of 1974, which rectified the U.S. Housing Act of 1937. The Act has been amended from time to time, and its requirements, as they apply to the Section 8 Tenant-Based Assistance Program and is described in and implemented throughout this Administrative Plan. The Section 8 tenant-based programs are federally funded and administered for the County of Merced by the HACM of the County of Merced ( HACM) through its Housing Choice Voucher program office.

Administration of the Housing Choice Voucher Program and the functions and responsibilities of the HACM staff shall be in compliance with the HACM's Administrative Plan and the Department of Housing and Urban Development's (HUD) Housing Choice Voucher Regulations as well as all Federal, State and local Fair Housing Laws and Regulations.

#### **Jurisdiction**

The jurisdiction of the HACM is the County of Merced.

#### **A. HACM MISSION STATEMENT**

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

#### **B. HACM VISION STATEMENT**

The HACM will be nationally recognized as an innovative agency and a leader in creating community partnerships that result in individuals and families having hope for a better tomorrow.

#### **C. LOCAL OBJECTIVES**

The Housing Choice Voucher tenant-based assistance program is designed to achieve these major objectives:

1. To ensure that all units meet Housing Quality Standards and families pay fair and reasonable rents.
2. To promote fair housing and the opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
3. To promote a housing program which maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.

In addition, the HACM has the following goals for the program:

1. To assist the local economy by increasing the occupancy rate and the amount of money flowing into the community.
2. To encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human service's needs.
3. To create positive public awareness and expand the level of family, owner, and community support in accomplishing the HACM's mission.
4. To attain and maintain a high level of standards and professionalism in our day-to-day management of all program components.
5. To administer an efficient, high-performing agency through continuous improvement of the HACM's support systems and commitment to our employees and their development.

**D. PURPOSE OF THE ADMINISTRATIVE PLAN [24 CFR 982.54]**

The purpose of the Administrative Plan is to establish policies for carrying out the programs in a manner consistent with HUD requirements and local goals and objectives contained in the Agency Administrative Plan. The Housing Choice Voucher Program was implemented as of October 1, 1999, and pre-merger Housing Voucher tenancies and Over Fair Market Rent tenancies converted automatically to Housing Choice Voucher tenancies on that date. All other existing contracts remained in effect until the family's second reexamination after the merger date or when a new lease was executed.

The HACM is responsible for complying with all changes in HUD regulations pertaining to these programs. If such changes conflict with this Administrative Plan, HUD regulations will have precedence. The HACM will revise this Administrative Plan as needed to comply with changes in HUD regulations. The original Administrative Plan and any changes must be approved by the Board of Commissioners of the agency, the pertinent sections included in the Agency Administrative Plan, and a copy provided to HUD.

This Administrative Plan is a supporting document to the HACM's Agency Plan, and is available for public review as required by 24 CFR 903.

Applicable regulations include:

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

Local rules that are made part of this Administrative Plan are intended to promote local housing objectives consistent with the intent of the federal housing legislation.

**E. RULES AND REGULATIONS [24 CFR 982.52]**

This Administrative Plan is set forth to define the HACM's local policies for operation of the housing programs in the context of Federal laws and Regulations. All issues related to Housing Choice Voucher not addressed in this document are governed by such Federal regulations, HUD Memos, Notices and guidelines, or other applicable law. The policies in this Administrative Plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

**F. TERMINOLOGY**

The HACM of the County of Merced is referred to as "HACM" throughout this document.

"Family" is used interchangeably with "Applicant" or "Participant" and can refer to a single person family.

“Tenant” is used to refer to participants in terms of their relationship to landlords.

“Landlord” and “owner” are used interchangeably.

“Disability” is used where “handicap” was formerly used.

“Non-citizens Rule” refers to the regulation effective June 19, 1995 restricting assistance to U.S. citizens and eligible immigrants.

The Section 8 program is also known as the Housing Choice Voucher Program.

“HQS” means the Housing Quality Standards required by regulations as enhanced by the Housing Authority.

“Failure to Provide” refers to all requirements in the Family Obligation (see Chapter “Denial or Termination of Assistance”).

“Merger date” refers to October 1, 1999, which is the effective date of the merging of the Section 8 Certificate and Voucher program into the Housing Choice Voucher Program.

See the Glossary for other terminology.

**G. FAIR HOUSING POLICY [24 CFR 982.54(d)(6)]**

It is the policy of the HACM to comply fully with all Federal, State, and local nondiscrimination laws and with the rules and regulations governing Fair Housing and Equal Opportunity in housing and employment.

The HACM shall not deny any family or individual the equal opportunity to apply for or receive assistance under the Section 8 Programs on the basis of race, color, sex, religion, familial status, creed, national or ethnic origin (called “protected classes”), ancestry, age, familial or marital status, disability or sex (including sexual orientation and gender identity/expression) or source of income. Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

To further its commitment to full compliance with applicable Civil Rights laws, the HACM will provide Federal, State, and local information to voucher holders regarding unlawful discrimination and any recourse available to families who believe they are victims of a discriminatory act. Such information will be made available during the family briefing session, and all applicable Fair Housing Information and Discrimination Complaint Forms will be made a part of the voucher holder's briefing packet and available upon request at the front desk.

Fair Housing posters are posted throughout the HACM offices, including in the lobby and interview rooms and the equal opportunity logo will be used on all outreach materials. Staff will attend local fair housing update training sponsored by HUD and other local organizations to keep current with new developments.

Except as otherwise provided in 24 CFR 8.21(c)(1), 8.24(a), 8.25, and 8.31, no individual with disabilities shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination because the HACM's facilities are inaccessible to or unusable by

persons with disabilities. Posters and housing information are displayed in locations throughout the HACM's office in such a manner as to be easily readable from a wheelchair.

The HACM offices are accessible to persons with disabilities. Accessibility for the hearing impaired is provided by the California Relay Service or by utilizing the Telecommunications Device for the Deaf (TDD) TeleType (TTY) at 711 or 1-800-855-7100.

#### H. **REASONABLE ACCOMMODATIONS POLICY [24 CFR 100.204]**

It is the policy of this HACM to be service-directed in the administration of our housing programs, and to exercise and demonstrate a high level of professionalism while providing housing services to families.

A participant with a disability must first ask for a specific change to a policy or practice as an accommodation of their disability before the HACM will treat a person differently than anyone else. The HACM's policies and practices will be designed to provide assurances that persons with disabilities will be given reasonable accommodations, upon request, so that they may fully access and utilize the housing program and related services. **The availability of requesting an accommodation will be made known by including notices on HACM forms and letters.**

**This policy is intended to afford persons with disabilities an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as those who do not have disabilities and is applicable to all situations described in this Administrative Plan including when a family initiates contact with the HACM, when the HACM initiates contact with a family including when a family applies, and when the HACM schedules or reschedules appointments of any kind.**

To be eligible to request a reasonable accommodation, the requester must first certify (if apparent) or verify (if not apparent) that they are a person with a disability under the following ADA definition:

- A physical or mental impairment that substantially limits one or more of the major life activities of an individual;
- A record of such impairment; or
- Being regarded as having such impairment.

Rehabilitated former drug users and alcoholics are covered under the ADA. However, a current drug user is not covered. In accordance with 5.403(a), individuals are not considered disabled for eligibility purposes solely on the basis of any drug or alcohol dependence. Individuals whose drug or alcohol addiction is a material factor to their disability are excluded from the definition. Individuals are considered disabled if disabling mental and physical limitations would persist if drug or alcohol abuse discontinued.

Once the person's status as a qualified person with a disability is confirmed, the HACM will require that a professional third party competent to make the assessment and provide written verification that the person needs the specific accommodation due to their disability and the change is required for them to have equal access to the housing program.

If the HACM finds that the requested accommodation creates an undue administrative or financial burden, the HACM will either deny the request and/or present an alternate accommodation that will still meet the need of the person.

- An undue administrative burden is one that requires a fundamental alteration of the essential functions of the HACM (i.e., waiving a family obligation).
- An undue financial burden is one that when considering the available resources of the agency as a whole, the requested accommodation would pose a severe financial hardship on the HACM.

The HACM will provide a written decision to the person requesting the accommodation within a reasonable time. If a person is denied the accommodation or feels that the alternative suggestions are inadequate, they may request an informal hearing to review the HACM decision.

Reasonable accommodation will be made for persons with a disability that requires an advocate or accessible offices. A designee will be allowed to provide some information, but only with the permission of the person with the disability.

The HACM 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 HACM will deny admission to those applicant households with individuals who are, at the time of consideration for admission, using medical marijuana. This is in accordance with the Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. 13661).

All HACM mailings will be made available in an accessible format upon request, as a reasonable accommodation.

#### **Verification of Disability**

The HACM will verify disabilities under definitions in the Fair Housing Amendments Act of 1988, Section 504 of the 1973 Rehabilitation Act, and Americans with Disabilities Act.

#### **Outreach**

Outreach efforts will include notification of the HACM's 504 Advisory Board as well as all other media and agencies listed in the HACM's Administrative Plan regarding public notices (see section on opening and closing the waiting list in "Applying for Admission" in Chapter 3).

#### **Applying for Admission**

All persons who wish to apply for any of the HACM's programs must submit a pre- application in written format, as indicated in our public notice. Pre-applications will be made available in an accessible format upon request from a person with a disability.

The full application is completed at the eligibility appointment in the applicant's own handwriting, unless assistance is needed, or a request for accommodation is requested by a person with a disability. Applicants will then be interviewed by HACM staff to review the information on the full application form. Verification of disability as it relates to 504, Fair Housing, or an ADA reasonable accommodation will be requested at this time. The full application will also include questions asking all applications whether reasonable accommodations are necessary.



**I. LIMITED ENGLISH PROFICIENCY (LEP) POLICY**

In accordance with Federal guidelines, the HACM may make reasonable efforts to provide and arrange free language assistance for persons with Limited English Proficiency (LEP). An LEP individual is a person who does not speak English as their primary language and who has a limited ability to read, write, speak, or understand English. This policy was developed to serve applicants, participants, and/or persons eligible for housing assistance.

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

**J. TRANSLATION OF DOCUMENTS**

In determining whether it is feasible to provide translation of documents written in English into other languages, the HACM will consider the following factors:

- Number of applicants and participants in the jurisdiction who do not speak English and speak the other language.
- Estimated cost to HACM per client of translation of English written documents into the other language.
- The availability of local organizations to provide translation services to non-English speaking families.
- Availability of bilingual staff to provide translation for non-English speaking families.

The HACM has bilingual staff and/or translation services available to assist non-English speaking families in languages that have been identified in accordance with the Housing Authority's Language Access Plan (LAP).

**K. MANAGEMENT ASSESSMENT OBJECTIVES**

The HACM operates its housing assistance programs with efficiency and can demonstrate to HUD auditors that the HACM is using its resources in a manner that reflects its commitment to quality and service.

The HACM policies and practices are consistent with the areas of measurement for the following HUD Section Eight Management Assessment Program (SEMAP) indicators:

1. Selection from the Waiting List
2. Reasonable Rent
3. Determination of Adjusted Income
4. Utility Allowance Schedule
5. HQS Quality Control Inspections
6. HQS Enforcement
7. Expanding Housing Opportunities
8. Payment Standards
9. Annual Reexaminations
10. Correct Tenant Rent Calculations
11. Pre-Contract HQS Inspections
12. Annual HQS Inspections

13. Lease-up
14. Family Self-Sufficiency Enrollment and Escrow Account Balances
15. Bonus Indicator De-concentration

Supervisory quality control reviews will be performed by a HACM designated staff or other qualified person other than the person who performed the work, as required by HUD, on the following SEMAP factors:

- Selection from the waiting list
- Rent reasonableness
- Determination of adjusted income
- HQS Enforcement
- HQS Quality Control

The annual sample of files and records will be drawn in an unbiased manner, leaving a clear audit trail. The minimum sample size to be reviewed will relate directly to each factor.

**L. RECORDS FOR MONITORING HACM PERFORMANCE**

To demonstrate compliance with HUD and other pertinent regulations, the HACM will maintain records, reports and other documentation for a time that is in accordance with HUD requirements and in a manner that will allow an auditor, housing professional or other interested party to follow, monitor and/or assess the HACM's operational procedures objectively and with accuracy and in accordance with SEMAP requirements with internal supervisory audits.

In addition to the required SEMAP documentation, a designated staff audits the following functions:

- o Not less than five percent (5%) of reexaminations
- o Not less than five percent (5%) of new applications

**M. 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 HACM will release family information.

The HACM'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 HACM'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 HACM will not collect or

maintain sensitive personally identifiable information without proper authorization. Additionally the HACM 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.

HACM 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 HACM 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 HACM to check a variety of income sources for all family members, regardless of income sources reported by applicants and participants.

The HACM 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.

#### **N. FAMILY OUTREACH**

The HACM will publicize and disseminate information to make known the availability of housing assistance and related services for very low-income families on a regular basis. When the HACM’s waiting list is open, the HACM will publicize the availability and nature of housing assistance for very low-income families in a newspaper of general circulation, minority media, and by other suitable means.

The HACM will communicate the status of housing availability to other service providers in the community, and advise them of housing eligibility factors and guidelines in order that they can make proper referrals for housing assistance.

#### **O. OWNER OUTREACH**

The HACM encourages owners of decent, safe and sanitary housing units to lease to HCV families.

The HACM conducts periodic meetings with participating owners to improve owner relations and to recruit new owners.

The HACM maintains a list of interested landlords and a list of units available for the HCV Program available through “Go Section 8”.

Printed material is offered to acquaint owners and managers with the opportunities available under the program.

The HACM has active participation in a community-based organization(s) comprised of private property and apartment owners and managers.

The HACM encourages program participation by owners of units located outside areas of poverty or minority concentration. The HACM periodically evaluates the demographic distribution of assisted families to identify areas within the jurisdiction where owner outreach should be targeted. The purpose of these activities is to provide more choices and better housing opportunities to families. Voucher holders are informed of a broad range of areas where they may lease units inside the HACM’s jurisdiction who are willing to lease units or help families who desire to live outside areas of poverty or minority concentration.

DRAFT

## Chapter 2

### ELIGIBILITY FOR ADMISSION

[24 CFR Part 5, Subparts B, D & E; Part 982, Subpart E]

#### **INTRODUCTION**

This chapter defines both HUD and the HACM's criteria for admission and denial of admission to the program. The policy of this HACM is to strive for objectivity and consistency in applying these criteria to evaluate the eligibility of families who apply.

The HACM staff will review all information provided by the family carefully and without regard to factors other than those defined in this chapter. Families will be provided the opportunity to explain their circumstances, to furnish additional information if needed, and to receive an explanation of the basis for any decision made by the HACM pertaining to their eligibility.

#### **A. ELIGIBILITY FACTORS [982.201(b)]**

The HACM accepts applications only from families whose head or spouse is at least 18 years of age or emancipated minors under State law.

To be eligible for participation, an applicant must meet HUD's criteria, as well as any permissible additional criteria established by the HACM.

The HUD eligibility criteria are:

- An applicant must be a "family"
- An applicant must be within the appropriate income limits

An applicant must furnish social security numbers for all family members age six and older.

- An applicant must furnish declaration of citizenship or eligible immigrant status and verification where required.
- At least one member of the applicant family must either be a U.S. citizen or have eligible immigration status before the HACM may provide any financial assistance.

Reasons for denial of admission are addressed in Chapter 15, "Denial or Termination of Assistance" of this Administrative Plan. These reasons for denial constitute additional admission criteria. The family's initial eligibility for placement on the waiting list will be made in accordance with the eligibility factors.

Evidence of citizenship/eligible immigrant status will not be verified until the family is selected from the waiting list for final eligibility processing for issuance of a voucher, unless the HACM determines that such eligibility is in question, whether or not the family is at or near the top of the waiting list.

#### **B. FAMILY COMPOSITION [24 CFR 982.201(c)]**

The applicant must qualify as a family. *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, and 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.

A remaining member of a resident family, meaning a family member of an assisted resident family who remains in the unit when other members of the family have left the unit.

Other families are defined by the HACM as follows:

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law, but who either can demonstrate that they have lived together within 12 months of a complete application for eligibility. ~~previously or certify that each individual's income and other resources will be available to meet the needs of the family.~~ Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes.

### **Head of Household**

The head of household is the adult member of the household who is designated by the family as head, is wholly or partly responsible for paying the rent, and has the legal capacity to enter into a lease under State/local law. Emancipated minors who qualify under State law will be recognized as head of household.

For an applicant, Head of Household will be determined by who is designated on the original application. However, if a family unit separates while presently on the waiting list, the HACM will make every effort to encourage the family members to decide on who will retain the Housing Choice Voucher application. Under no circumstances shall the authority allow the separate households to be admitted as two applicants to the wait list.

The applicant, or Head of Household, is not allowed to switch a member on the application, or to add a member as Head of Household in order to receive a preference.

*Example:* Head of Household adds grandfather to application, but switches the grandfather to Head of Household in order to receive Veteran Status.

A new application on the waiting list, also is not acceptable, if the Head of Household is, in this particular case, the grandfather, and the same family members are on the application. A new application would only be acceptable, for an example, with the grandfather as the Head of

Household, as long as the family members on the application were not family members of the other application.

The original Head of Household must remain the Head of Household, except for a split in the family as explained below.

If the family cannot agree on whom will retain the Housing Choice Voucher application and there is no court determination, the HACM shall use the following guidelines to determine who will retain the application based on HACM's determination of the evidence presented:

**1<sup>st</sup> Priority**

Given to victims of domestic violence if domestic violence is a contributing cause of the family breakup.

**2<sup>nd</sup> Priority**

Given to the adult member of the household who retains primary physical custody of the majority of the household's minor children.

**3<sup>rd</sup> Priority**

Given to the adult member of the household who is disabled.

**4<sup>th</sup> Priority**

Given to the adult member who initially applied, if another adult member was added at a later time.

Note: If all of the circumstances do not apply and the only adult member left on the application is an adult member that was not added at the initial submission of the application, that adult member will not have residual rights to the application, and will need to reapply to the Housing Choice Voucher Program.

The HACM shall require verification of the above circumstances. If either or both of the families do not provide the documentation requested by the HACM, removal from the waiting list for failure to supply requested verifications will occur.

**Spouse of Head**

Spouse means the husband or wife of the head.

For proper application of the Non-citizens Rule, the definition of spouse is: the marriage partner who in order to dissolve the relationship would have to be divorced. It includes the partner in a common law marriage. The term "spouse" does not apply to boyfriends, girlfriends, significant others, or co-heads.

**Co-Head**

A co-head is an individual in the household who is equally responsible for the lease with the head of household. A family may have a spouse or co-head, but not both. A co-head never qualifies as a dependent.

**Live-in Attendants [24 CFR 982.316]**

A family may include a live-in aide provided that such live-in aide:

- Is determined by the HACM to be essential to the care and well-being of an elderly person, a near-elderly person, or a person with disabilities;
- Is not obligated for the support of the person(s), and
- Would not be living in the unit except to provide care for the person(s).

A live-in aide is treated differently than family members:

- Income of the live-in aide will not be counted for purposes of determining eligibility or level of benefits.
- Live-in aides are not subject to Non-Citizen Rule requirements.
- Live-in aides may not be considered as a remaining member of the tenant family.
- A Live-in aide will not be considered as a family member at a later date.

Relatives are not automatically excluded from being live-in aides, but they must meet all of the elements in the live-in aide definition described above.

A live-in aide may only reside in the unit with the approval of the HACM. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or caseworker. The verification provider must certify that a live-in aide is needed for the care of the family member who is elderly or disabled.

The HACM will approve a live-in aide if needed as a reasonable accommodation to make the program accessible to and usable by the family member with a disability. Approval of a live-in aide for reasonable accommodation will be in accordance with CFR 24 Part 8 and Chapter 1, Section H, "Reasonable Accommodations Policy" of this Administrative Plan. Verification must include the hours the care will be provided.

At any time, the HACM will refuse to approve a particular person as a live-in aide or may withdraw such approval if:

1. The person has been on a federal housing program and evicted from public housing or terminated from Housing Choice Voucher due to program violation.
2. The person owes any amounts of money to any federal housing program.
3. The person commits fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program; commits drug-related criminal activity, or violent criminal activity. The person commits other criminal activity or abuses alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents, HACM employees and agents, and persons residing in the immediate vicinity of the premises.
4. The person has employment outside of the home.
5. Another person is residing in the unit who is capable of providing the care for participant.
6. Participant requiring live in aide must supply the HACM with verification from a reliable, knowledgeable professional, such as a medical doctor, social worker or caseworker. The verification must demonstrate that a live-in aide is necessary and the family would not be equally well served by a home health care service or a care provider who does not live in the unit. This verification will be required to be given to the HACM at the initial time the live-in aide begins to reside in the subsidized unit.
7. Other additional family members of live in care attendant reside in unit with participant.



8. In instances where the family receives payments from Human Services through In Home Supportive Services (IHSS) program, and the live-in aide reported to the HACM is not the same person on the record with IHSS.
9. The live-in aide's qualification for housing occupancy terminates when the individual needing the supportive services leaves the unit or fails to qualify for continued occupancy or where the need for live in assistance ceases. The live-in aide does not qualify for continued occupancy as a remaining member of the tenant family, even if they are related by blood, marriage or operation of law.

### **Multiple Families in the Same Household**

When families apply which consist of two families living together (such as a mother and father, and a daughter with her own husband or children) and if they apply as a family unit, they will be treated as a family unit.

### **Joint Custody of Children**

Children who are subject to a joint custody agreement but live with one parent at least fifty-one percent (51%) of the time will be considered members of the household." Fifty-one percent (51%), is defined as 183 days of the year.

~~There will be a self-certification required of families who claim joint custody or temporary guardianship.~~

When both parents are on the waiting list and both are trying to claim the child, the parent whose address is listed in the school records will be allowed to claim the school-age child as a dependent.

In some instances both parents will have joint custody of a child, and the child will reside with one parent more than 51 percent of the time, but the other parent will receive the welfare benefits for the child. In these cases the HACM will consult with the welfare department and review the court ordered visitation documents. HACM will make a determination based on the information presented.

Other factors that the HACM will consider to determine subsidy standard and/or deductions from annual income are:

- Which family takes the child as a dependent on the most recent Federal Income Tax Return.
- School records showing address of child.
- Who pays for the primary medical care of child.
- Any other court documents pertaining to custody or details of support for the child.
- Whose name and address appear on the SS and/or SSI income records with Social Security for the child's benefits.

### **Student Eligibility [24 CFR 5.612]**

#### **Restrictions on Individual who are Enrolled at an Institution of Higher Education and Applying for HCV in their Individual Capacity:**

Restrictions on assistance to students enrolled in an institution of higher education are as follows:

No assistance shall be provided under section 8 of the 1937 Act to any individual who:

- Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965;
- Is under 24 years of age;
- Is not a veteran of the U.S. military;
- Is unmarried;
- Does not have a dependent child;
- Is not a person with disabilities and was not receiving assistance under Section 8 of the 1937
- Act as of November 30, 2005; and
- Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance.

**C. INCOME LIMITATIONS [24 CFR 982.201(b), 982.353]**

To be eligible for assistance, an applicant must have an annual income at the time of admission that does not exceed the very low-income limits for occupancy established by HUD.

To be income eligible, the applicant must be a family in the very low-income category, which is a family whose income does not exceed fifty percent (50%) of the area median income. The HACM will not admit families whose income exceeds fifty percent (50%) of the area median income except those families included in 24 CFR 982.201(b).

To be income eligible the family may be under the low-income limit in any of the following categories [24 CFR 982.201(b)]:

- A very low-income family.
- A low-income family that is continuously assisted under the 1937 Housing Act. An applicant is continuously assisted if the family has received assistance under any 1937 Housing Act program within sixty (60) days of voucher issuance. Programs include any housing federally assisted under the 1937 Housing Act.
- A low-income family physically displaced by rental rehabilitation activity under 24 CFR.511.
- A low-income non-purchasing family residing in a HOPE 1 or HOPE 2 project.
- A low-income non-purchasing family residing in a project subject to a home-ownership program under 24 CFR 248.173.
- A low-income family or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract under
  - 24 CFR 248.165.
- A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a project subject to a resident home-ownership program.

To determine if the family is income-eligible, the HACM compares the annual income of the family to the applicable income limit for the family's size. Families whose annual income exceeds the income limit will be denied admission and offered an informal review.

**Portability**

For initial lease-up at admission, families who exercise portability must be within the ~~very low~~ **applicable** income limit for the jurisdiction of the receiving HACM in which they want to live.

**D. MANDATORY SOCIAL SECURITY NUMBERS [24 CFR 5.216, 5.218]**

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. 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 age 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 Social Security number;
- Previously disclosed a Social Security number that HUD or the Social Security Administration (SSA) determined was invalid; or
- Been issued a new Social Security number

Once a participant has disclosed and the HACM has verified each SSN, the following rules apply:

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

*Addition of new household member who is under the age of 6 and has no assigned SSN.* When a participant or applicant requests to add a new household member who is under the age of 6 and has not been assigned a SSN, the participant/applicant shall be required to provide the complete and accurate SSN assigned to each new child within 90 calendar days of the child being added. For new admission, the 90-Day clock doesn't start ticking until the date of lease-up.

The HACM shall grant an extension of one additional 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.

If the participant/applicant does not provide requested SSN within the authorized time period, the HACM will impose appropriate penalties in accordance with 24 CFR 5.218.

The mandatory SSN requirements do 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.

**E. CITIZENSHIP/ELIGIBLE IMMIGRATION STATUS [24 CFR PART 5, SUBPART E]**

In order to receive assistance, a family member must be a U.S. citizen or eligible immigrant. Individuals, who are neither, may elect not to contend their status. Eligible immigrants are persons who are in one of the immigrant categories as specified by HUD.

For the citizenship/eligible immigration requirement, the status of each member of the family is considered individually before the family's status is defined.

**Mixed Families**

A family is eligible for assistance as long as at least one member is a citizen or eligible immigrant. Families that include eligible and ineligible individuals are called "mixed." Such applicant families will be given notice that their assistance will be pro-rated and that they may request an informal review if they contest this determination.

**All members ineligible**

Applicant families that include no eligible members are ineligible for assistance. Such families will be denied admission and offered an opportunity for an informal review.

**Non-citizen students**

As defined by HUD in the non-citizen regulations (24 CFR 5.522), they are not eligible for assistance.

**Appeals**

For this eligibility requirement only, the applicant is entitled to an informal hearing exactly like those provided for participants.

**Verification of Status before Admission**

The HACM will not provide assistance to any family prior to the verification of eligibility for the individual or at least one member of the family pursuant to this section.

**F. OTHER CRITERIA FOR ADMISSIONS [24 CFR 982.552(b)]**

A family will not be admitted to the program if any member of the family has been evicted from federally assisted housing for serious violations of the lease within the past five (5) years. A family will be denied admission to the program if any member of the family fails to sign and submit consent forms for obtaining information required by the HACM, including HUD Form 9886.

The HACM will apply the following criteria, in addition to the HUD eligibility criteria, as grounds for denial of admission to the program:

- The family must not have violated any family obligation during a previous participation in the Housing Choice Voucher program for five (5) years prior to final eligibility determination.
- The HACM will make an exception if the family member who violated the family obligation is not a current member of the household on the application.
- The family must pay any outstanding debt owed to the HACM or another Has a result of prior participation in any federal housing program within fifteen (15) days of HACM notice to repay. If the family has already entered into a repayment agreement, the family must provide written proof of participation in the agreement.

- The family must be in good standing regarding any current payment agreement made with another Housing Authority for a previous debt incurred, before this HACM will allow participation in its Housing Choice Voucher Program.
- The HACM will check criminal history for all adults in the household to determine whether any member of the family has violated any of the prohibited behaviors as referenced in the section on screening and termination's policy (Chapter 15, "Denial or Termination of Assistance" of this Administrative Plan).
- If any member of the family is subject to a lifetime registration requirement under a State sex offender registration program.
- If any applicant deliberately misrepresents the information on which eligibility or tenant rent is established, the HACM may deny assistance and may refer the family file/record to the proper authorities for appropriate disposition.
- If any household member has been convicted of manufacturing or producing methamphetamine in a building or complex assisted under the public housing or Housing Choice Voucher Programs, they are permanently prohibited admission to the Housing Choice Voucher Program.
- The family must pay any outstanding prior debt owed to the HACM or another Housing Authority as a result of prior participation in any federal housing program. If a family is not currently entered into a repayment agreement or is not in good standing with an existing repayment agreement, the family must pay the balance in full within 15 days of the HACM notice to repay.

#### **G. Criminal Background Checks**

The HACM will conduct criminal background checks on all adult members of the family at time of consideration of eligibility.

Background checks and denials based there on may occur before or after admission and/or occupancy to the program.

##### **Purpose**

All federally assisted housing is intended to provide a place to live and raise families, not a place to commit crime, to use or sell drugs or terrorize and/or harass neighbors. It is the intention of the HACM to fully endorse and implement a policy, which is designed to:

- Help create and maintain a safe and drug free community.
- Keep our program participants free from threats to their personal and family safety.
- Support parental efforts to instill values of personal responsibility and hard work.
- Help maintain an environment where children can live safely, learn and grow up to be productive citizens.
- Assist families in their vocational/educational goals in the pursuit of self sufficiency.

##### **Administration**

All screening and termination procedures shall be administered fairly and in such a way as not to violate rights to privacy or discriminate on the basis of race, color, nationality, religion, familial status, disability, or other legally protected groups.

To the maximum extent possible, the HACM will involve other community and governmental entities in the promotion and enforcement of this policy.

The fact that an applicant or tenant was arrested for a disqualifying offense shall not be treated or regarded as proof that the applicant or tenant engaged in disqualifying criminal activity. The arrest may, however, trigger an investigation to determine whether the applicant or tenant actually engaged in disqualifying criminal activity. As part of its investigation, HACM may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The HACM may also consider any statements made by witnesses or the applicant or tenant not included in the police report; whether criminal charges were filed; whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal; and any other evidence relevant to determine whether or not the applicant or tenant engaged in disqualifying activity.

### **Screening of Applicants**

In an effort to prevent future illegal drug related, violent criminal activity and other criminal activity, as well as other patterns of behavior that pose a threat to the health, safety or right to peaceful enjoyment of the premises by other residents, the HACM will endeavor to screen applicants as thoroughly and fairly as possible.

Such screening of new admissions will apply to any member of the household who is 18 years of age or older or who is an emancipated minor, including a live-in aide. Criminal background checks will also be conducted on any adult being added to a participant's family composition, including a live-in aide.

All adult members of families who port into HACM's jurisdiction, whether a new admission or a participant, will be screened for criminal background history.

Any violations as stated in the above paragraphs will be grounds for termination/denial of admission.

### **HUD Definitions**

~~*Drug related criminal activity* is the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance. Drug related criminal activity means on or off the premises, not just on or near the premises.~~

~~*Premises* is defined as the building or complex in which the dwelling unit is located, including common areas and grounds. (Federal Register 2/18/99 QHWRA Initial Guidance)~~

~~*Violent criminal activity* includes any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against a person or property, and the activity is being engaged in by any family member, which could include a live-in aide.~~

~~*Other criminal activity* includes criminal activity, which may threaten the health or safety of the owner, property management staff, HACM employee, residents of the premises, or persons residing in the immediate vicinity of the premises.~~

### **Standard for Violation**

The HACM will deny participation in the program to applicants and terminate assistance to participants in cases where the HACM determines there is reasonable cause to believe that the person (person also can include a live-in aide) is either illegally using a controlled substance, or if

the person abuses/abused alcohol, or engages/engaged in violent criminal activity, or commits/committed any other criminal activity that may interfere with the health, safety or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises), or by persons residing in the immediate vicinity of the premises. "Engaged in or engaging in" violent criminal activity means any act by applicants or participants, household members, or guests which involves criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person of another, which did or did not result in the arrest and/or conviction of the applicant or participant, household members, guests, or live-in aide.

### **Housing Authority Discretion**

In deciding whether to deny or terminate assistance because of action or failure to act by members of the family, the HACM has discretion to consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, the length of time since the violation occurred and more recent record of compliance, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure to act.

The HACM may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The HACM may permit the other members of a family to continue in the program.

### **Notice of Denial of Assistance**

In any case where the HACM decides to deny assistance to a family, the HACM must give the family written notice which states:

- The reason(s) for the proposed denial,
- The family's right, if they disagree, to request an Informal Review
- The date by which a request for an informal review must be received by the HACM.

### **Required Evidence**

*Preponderance of 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. The intent is not to prove criminal liability, but to establish that the act(s) occurred. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence. The HACM may deny or terminate assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

*Credible evidence* may be obtained from police and/or court records. Testimony from neighbors, when combined with other factual evidence can be considered credible evidence. Other credible evidence includes documentation of drug raids or arrest warrants.

The HACM may pursue fact-finding efforts as needed to obtain credible evidence; however, the HACM may deny or terminate assistance based only on preponderance of evidence as stated above.

**Domicile (Primary Residence/Legal Residence)**

Domicile is defined as a family's legal place of residence. It is the location where an individual or individuals claim their residence of first choice and spend a significant amount of their time residing at that location and caring about their affairs through that location. Domicile may be established by at least two of the following documents:

1. An individual receiving correspondence at that address;
2. An individual having a vehicle or vehicles registered with that address;
3. An individual listing the residence address on their driver's license or other personal identification cards or listings;
4. An individual listing the residence in connection with any employment of that individual;
5. An individual whose name is listed at the residences addressed for purposes of utility bills or other services provided at that residence address;
6. An individual who uses the residence address to register to vote;
7. Attendance of dependents at a primary or secondary school;
8. Filing a homeowner's property tax exemption;
9. Renting or leasing a home for use as a residence;
10. Recent marriage or divorce records issued in California;
11. Recent California court documents showing an address; or
12. Police records from a California law enforcement agency.

Documents *not acceptable* as verification of residency are:

A declaration or an affidavit can only be used in support with at least two of the above verifications:

Domicile residence can also be established on the basis that an individual is observed, on a frequent basis departing from and returning to the residence. Domicile residence can further be established if an individual has resided at the residence in the capacity of a guest or visitor for a majority of any two week period of time, or a total of thirty (30) days in a 12 month period.

**H. TENANT SCREENING [24 CFR 982.307]**

The HACM will take into consideration any of the criteria for admission described in Chapter 15, "Denial or Termination of Assistance" of this Administrative Plan. The HACM will not screen family behavior or suitability for tenancy. The HACM will not be liable or responsible to the owner or other persons for the family's behavior or the family's conduct in tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. On or before the HACM's approval of the tenancy, the HACM will inform the owner that screening and selection for tenancy is the responsibility of the owner. The owner is responsible for screening families based on their tenancy histories, which may include:

- Payment of rent and utility bills
- Caring for a unit and premises
- Respecting the rights of other residents to the peaceful enjoyment of their housing
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety



- or property of others
- Compliance with other essential conditions of tenancy

The HACM must offer the owner other information in the HACM's possession concerning the family, including:

- The family's current and prior address as shown in the HACM's records; and
- The name and address (if known by the HACM) of the landlord at the family's current and prior address.

The HACM may offer the owner other information in the HACM's possession concerning the family, including:

- Information about the family's tenancy history
- Information about drug-trafficking by family members

The same types of information will be supplied to all owners.

The HACM will advise families how to file a complaint if they have been discriminated against by an owner. The HACM will advise the family to make a Fair Housing complaint. The HACM may also report the owner to HUD (Fair Housing/Equal Opportunity) or the local Fair Housing Organization.

#### **I. CHANGES IN ELIGIBILITY PRIOR TO EFFECTIVE DATE OF THE CONTRACT**

Changes that occur during the period between issuance of a voucher and lease up may affect the family's eligibility or share of the rental payment.

~~Once families are briefed their annual income is "frozen" until lease up. If the families acquire additional income, the additional income will be verified and reviewed and added as an interim AFTER LEASE UP. However, if the additional income puts the family over the very low income limit for the program before leaseup, the family's voucher will be withdrawn and the family will be denied admittance to the program.~~

~~If the HACM is pulling an application pool off the waiting list of families at or below 30% of median income; and if a determination is made by the HACM staff before issuance of the voucher, that some families are above the 30% of median income, these families will be put back on the waiting list with the same date and time and, if applicable, local preference, until such time as applicants are being pulled who are above the income targeting rate of 30% of median income.~~

#### **J. INELIGIBLE FAMILIES**

Families who are determined to be ineligible will be notified in writing of the reason for denial and given an opportunity to request an informal review, or an informal hearing if they were denied due to non-citizen status. See [Chapter 19](#), "Complaints and Appeals" of this Administrative Plan for additional information about reviews and hearings.

#### **K. PROHIBITED ADMISSIONS CRITERIA [982.202(b)]**

Admission to the program may not be based on:

- Where the family lives before admission to the program;
- Where the family will live with assistance under the program;
- Discrimination because members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;
  
- Discrimination because a family includes children;
- Whether a family decides to participate in a family self-sufficiency program; or
- Other reasons listed in Chapter 1, Section G (Fair Housing Policy) and Section H (Reasonable Accommodations Policy) of this Administrative Plan.

DRAFT

## Chapter 3

### APPLYING FOR ADMISSION

[24 CFR 982.204]

#### **INTRODUCTION**

The policy of the HACM is to ensure that all families who express an interest in housing assistance are given an equal opportunity to apply, and are treated in a fair and consistent manner. This chapter describes the policies and procedures for completing an initial pre-application for assistance, placement and denial of placement on the waiting list, and limitations on who may apply. The primary purpose of the intake function is to gather information about the family, but the HACM will also utilize this process to provide information to the family so that an accurate and timely decision of eligibility can be made. Applicants will be placed on the waiting list in accordance with this Administrative Plan.

This section covers an overview of the initial pre-application intake process. It will explain the HACM policies on how to notify the public of the opening and closing of the waiting list. It also describes how an applicant may apply for rental assistance and how the HACM will handle the pre-application it receives.

#### **A. OVERVIEW OF THE APPLICATION TAKING PROCESS**

The purpose of application taking is to permit the HACM to gather information and determine placement on the waiting list. The application will contain questions designed to obtain pertinent program information.

Families who wish to apply for any one of the HACM's programs must complete a pre-application form when application waiting list is open. Pre-applications will be made available in an accessible format upon request from a person with a disability.

When the waiting list is open, any family asking to be placed on the waiting list for HCV rental assistance will be given the opportunity to complete a pre-application.

The application process will involve two phases. The first is the "initial" application for assistance (referred to as a pre-application). This first phase results in the family's placement on the waiting list.

The pre-application will be dated, time-stamped, and referred to the HACM's where it will be maintained until such time as it is needed for processing.

The second phase is the "final determination of eligibility" (referred to as the full application). The full application takes place when the family is selected from the waiting list. At this time the HACM ensures that verification of all HUD and HACM eligibility factors is current in order to determine the family's eligibility for the issuance of a voucher.

#### **B. OPENING/CLOSING OF THE WAITING LIST [24 CFR 982.206, 982.54(d)(1)]**

##### **Opening the Waiting List**

The HACM will utilize the following procedures for opening the waiting list.

When the HACM opens the waiting list, the HACM will advertise through public notice in the following newspapers, minority publications and media entities:

- Agency website
- The Merced Sun Star
- Human Services Agency
- Area Agency on Aging
- United Way of Merced
- Other None profit agencies
- Other public Agencies for the County

The notice will contain:

- The dates, times, and the locations where families may apply.
- The programs for which applications will be taken.
- A brief description of the program.
- Limitations, if any, on who may apply.
- The Methods of by which the pre-applications will be accepted.

The notices will be made in an accessible format if requested. They will provide potential applicants with information that includes the web site address, the HACM address and telephone number, how to submit an application, information on eligibility requirements, and the availability of local preferences.

Upon request from a person with a disability, additional time will be given as an accommodation for submission of an application after the closing deadline. This accommodation is to allow persons with disabilities the opportunity to submit an application in cases when a social service organization provides inaccurate or untimely information about the closing date.

If the waiting list is open, the HACM will accept applications from eligible families unless there is good cause for not accepting the application, such as denial of assistance because of action or inaction by members of the family for the grounds stated in Chapter 15, "Denial or Termination of Assistance" of this Administrative Plan.

#### **FAMILY OUTREACH [24 CFR 982.266]**

The HACM will conduct outreach as necessary to ensure that the HACM has a sufficient number of applicants on the waiting list to use the resources available.

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

The HACM may utilize public service announcements.

#### **FAIR HOUSING POLICY [24 CFR 982.54(d)(6)]**

It is the policy of the HACM to comply fully with all Federal, State, and local Non-discrimination laws and with the rules and regulations governing Fair Housing and Equal Opportunity in housing and employment.

The HACM shall not deny any family or individual the opportunity to apply for or receive assistance under the Section 8 Programs on the basis of race, color, religion, sex, national origin, age, familial or marital status, disability, sexual orientation and gender identity.

**HOW TO APPLY**

The HACM 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 Housing Choice Voucher rental assistance. The HACM 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

At the time the HACM announces its intent to open the waiting list, the actual methods for accepting pre applications will be clearly stated in the public announcement and similar outreach methods. If an applicant is disabled and requires special accommodation, specific instructions in making a reasonable accommodation request will be included in the public notice and other pre application outreach materials.

***Pre-application by Web***

When this method is available, families can apply on line at [www.merced-pha.com](http://www.merced-pha.com).

***Pre-application Intake by Phone or by Mail***

When this method is available, pre applications will be taken by phone or mail. HACM will record the date and time the pre application is received.

***Pre-application Intake In Person***

When this method is available, pre applications will be completed by the family. The HACM will record the date and time the pre application is received.

Duplicate pre applications, including pre applications from a segment of an applicant household, will not be accepted.

**Methods for Placement on the Waiting List**

- **Lottery**

The HACM may use a lottery system to select and place families on the waiting list. Pre applications will be accepted for a designated period of time as specified in the announcement notice. After pre applications are no longer being accepted, the HACM will take pre applications that have been submitted and randomly assigned a lottery number to each pre application. The number of applicants selected for the list will be based on the number of families required to achieve a sufficient waiting list as determined by the HACM.

- **Date and Time**

The HACM may use a date and time system to select and place families on the waiting list. Pre applications will be accepted for a designated period of time as specified in the announcement notice. The number of applicants selected for the list will be based on the

number of families required to achieve a sufficient waiting list as determined by the HACM.

#### **Placement on the Waiting List**

The HACM may send a written notification to all households selected for placement on the waiting list. Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list.

#### **Special Admissions (non-waiting list): Assistance Targeted by HUD [24 CFR 982.203] (Moved to Chapter 4 page 4-6)**

If HUD awards the HACM program funding that is targeted for families living in specified units:

- The HACM must use the assistance for the families living in these units.
- The HACM may admit a family that is not on the HACM waiting list, or without considering the family's waiting list position.
- The HACM must maintain records showing that the family was admitted with HUD-targeted assistance.

The following are examples of types of program funding that may be targeted for a family living in a specified unit:

- A family displaced because of demolition or disposition of a public 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 Homeownership Act of 1990;
- A non-purchasing family residing in a project subject to a homeownership program (under 24 CFR 248.173);
- A family displaced because of mortgage prepayment or voluntary termination of a mortgage insurance contract (as provided in 24 CFR 248.165);
- 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 period.

#### **Targeted Admissions**

HACM periodically has the opportunity to apply for targeted funding for special populations. The programs covered in this chapter refer to the following:

- Family Unification Program (FUP)
- Veteran's Affairs Supportive Housing (VASH) program

- Shelter Plus Care program (SPC)

Specific criteria related to these programs are covered in the charts below.

### **Continued Assistance for Targeted Programs**

Targeted Programs refers to special purpose vouchers operated within the Housing Choice Voucher program and are intended to serve specific subpopulations and often correspond with supportive services. Although most of these programs provide ongoing housing assistance as long as the household is income eligible, some have an expiration period or can terminate eligibility if supportive services or funding cease to exist. HACM recognizes that this practice could potentially result in homelessness or other unstable living conditions, therefore, will exercise the option to continue assistance to such populations under the Housing Choice Voucher program. This option will be available to Targeted Programs such as, but not limited to:

- Family Unification Program — FUP
- Veteran Affairs Supportive Housing Program — VASH
- Shelter Plus Care program — SPC

In effort to align with voucher utilization goals, continued assistance for targeted program participants (Except FUP Youth) will only be considered when 1) the program making the request is at 98% utilization or above; 2) tenant based vouchers are available; and 3) the transfer would not result in over-leasing under the tenant based voucher program. The intent of providing the continued assistance option is to:

- Create attrition and availability of targeted program vouchers to targeted subpopulations with special needs.
- Allow participants who no longer require the supportive services to retain housing, but still need rental subsidy, the opportunity to “graduate” from a targeted program to the next level towards independence.
- Provide continuity and housing stability for youth who have an expiring FUP voucher.

<b>Pre-Entry Factors Related to Targeted Programs</b>			
<b>Program Specific</b>	<b>VASH</b>	<b>FUP</b>	<b>SPC</b>
<b>Eligibility Criteria</b>	<p>VAMC Determination of Veteran status by VAMC. They are also responsible for documenting homelessness according to HACM.</p> <ul style="list-style-type: none"> <li>Income eligibility; up to 50% AMI</li> <li>Citizenship Verification</li> <li>Criminal Background Check for Lifetime Sexual Offender</li> </ul>	<p>Families for whom lack of adequate housing is a primary factor in the separation or threat of imminent separation of a child or children from their families</p> <p>Youths (18-21 years old) who left foster care at age 16 or older and lack adequate housing</p> <p>Families or youths displaced by</p>	<ul style="list-style-type: none"> <li>Homeless, as defined by the Stewart B. McKinney Homeless Assistance Act as funded by the U.S. Department of Housing and Urban Development [42 USC 11302]; AND</li> <li>Disabled, as defined by the U.S. Department of Housing and Urban Development [24 CFR 582.5</li> <li>The household's annual income may not exceed the very low income limit, as established by the U.S. Department of Housing and</li> </ul>
<b>Outreach Responsibility</b>	VAMC (primary) & HACM (secondary)	HACM and Human Services Agency (HSA)	HACM and Mental Health Agency (MH)
<b>Partnership or</b>	MOU between HACM & VAMC	MOU between HACM and	MOU between HACM and MH
<b>Requires</b>	Yes	HSA Yes	Yes
<b>Pre-Application</b>	Handled by VAMC	HCV Pre-Application and Referral Form	Handled by MH
<b>Referral Process</b>	<p>Referrals handled by VAMC</p> <p>VAMC Social Worker refers VASH eligible households</p> <p>HACM notifies VAMC when a voucher is vacated.</p>	HSA refers FUP eligible families or youth by submitting a completed HCV Pre-application Form and eligibility packet	MH refers S+C eligible individuals by submitting a completed HCV Pre-application Form and eligibility packet



<b>Pre-Entry Factors Related to Targeted Programs</b>			
<b>Program Specific</b>	<b>VASH</b>	<b>FUP</b>	<b>SPC</b>
Placed on HCV Waiting List?	No.	<p>Yes. FUP eligible families and youth are placed on HCV waiting list and coded as "FUPF" or "FUPY" respectively.</p> <p>HACM will check to see if the referred family/youth is on existing HCV waiting list and code them accordingly.</p> <p>If FUP eligible families or youths are not on the existing open HCV waiting list, HACM will add the family/youth on the HCV waiting list in date and time order of the referral and code them accordingly.</p> <ul style="list-style-type: none"> <li>If the existing HCV</li> </ul>	
Selection from the HCV Waiting List	N/A	<p>HACM will select from the tenant based waiting list according to date and time of FUP referrals.</p> <p>HACM may pull only FUP program specific applicants in date</p>	N/A
<b>Pre-Entry Factors</b>	Yes, except will be required to undergo criminal background check only regarding registered sex offenders.	Yes. Must meet income and other voucher eligibility requirements. If requirements are not met, the FUP eligible family or youth will not be eligible to be placed back on the HCV waiting list.	Yes. Must meet income and other voucher eligibility requirements.
<b>Program Specific Criteria</b>			
Voucher Expiration			
<b>Program Specific Screening Criteria Y/N</b>	Required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. (24 CFR 982.553(2))	Required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. (24 CFR 982.553(2))	Required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. (24 CFR 982.553(2))

**Separate Waiting Lists for Housing Authority Programs (Moved to Chapter 4 page 4-8)**

In accordance with HUD regulations (24 CFR 982.205 (ii)) at the time an applicant is applying for HCV assistance, if pre-applications are being accepted for its Public Housing or Project Based program, the family must be offered an opportunity to apply for the other program.

**PRE-APPLICATION [24 CFR 982.204]**

Pre-application will include the following:

**For head of household:**

- Social Security number
- First, middle initial and last name
- Date of birth
- Gender
- Street address, city, state and zip
- Contact phone number
- Race
- Ethnicity
- E-Mail Address
- Source of Income, if applicable
- Total Monthly Income, if applicable

**For other family members:**

- For each member:
- First and last name;
- Relationship to head of household;
- Date of birth
- Gender
- Race
- Ethnicity
- Source of Income, if applicable
- Total monthly income, if applicable

**Other information:**

- Identify whether any household member is a person with disabilities, and/or a person with a mobility impairment needing an accessible unit (wheelchair accessible)
- Selected preference, if applicable.

**C. Closing the Waiting List**

The HACM may stop applications if there are enough applicants to fill anticipated openings for the next 24 months. The waiting list may not be closed if it would have a discriminatory effect inconsistent with applicable civil rights laws.

The HACM may announce the closing of the waiting list by public notice.

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 HACM will give at least a ten (10) day notice prior to closing the list. When the period for accepting applications is over, the HACM 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.

**D. “INITIAL” APPLICATION PROCEDURES [24 CFR 982.204(b)]**

The HACM will utilize a pre-application form. The information is to be filled out by the applicant whenever possible.

The purpose of the pre-application is to permit the HACM to preliminarily assess family eligibility or ineligibility and to determine placement on the waiting list. The pre-application will contain at least the following information:

- Applicant name
- Family size (number of bedrooms the family qualifies for under HACM subsidy standards)
- Date and time of application
- Qualification for any local preference
- Racial or ethnic designation of the head of household
- Annual (gross) family income
- Email Address
- Social Security Number
- Date of Birth
- Contact Phone Number

Incomplete or duplicate applications will not be accepted.

Pre-applications will not require an interview. The information on the application will not be verified until the applicant has been selected for final eligibility determination. Final eligibility will be determined when the full application process is completed and all information is verified. The head of household will also be required to sign the Supplement to Application for Federally Assisted Housing Form.

**E. APPLICANT STATUS WHILE ON WAITING LIST [CFR 982.204]**

Applicants are required to inform the HACM in writing of household changes, including address within 10 business days of the occurrence. Applicants are also required to respond to requests from the HACM to update information on their application and to determine their interest in assistance.

**F. TIME OF SELECTION [24 CFR 982.204]**

When funding is available, families will be selected from the waiting list in their determined sequence, regardless of family size, subject to income targeting requirements.

When there is insufficient funding available for the family selected from the wait list, the HACM will not admit any other applicant until funding is available for the first applicant.

**G. COMPLETION OF A FULL APPLICATION**

All preferences claimed on the pre-application or while the family is on the waiting list will be verified after the family is selected from the waiting list during the full application process. The qualification for preference must exist at the time the preference is claimed and at the time of verification, because claim of a preference determines placement on the waiting list.

After the preference is verified, when the HACM is ready to select applicants, applicants will be required to:

- Complete a Personal Declaration prior to the full application interview.
- Complete a full application packet in their own handwriting, unless assistance is needed. If a request for accommodation is made by a person with a disability, the HACM interviewer will complete the full application form with answers supplied by the applicant. The applicant will then be interviewed by HACM staff to review the information on the full application form.
- Participate in a full application interview with a HACM representative during which the applicant will be required to furnish complete and accurate information as requested by the interviewer. The applicant will sign and certify that all information is complete and accurate.
- The full application packet will be communicated as requested as an accommodation to a person with a disability.

#### **Requirement to Attend Interview**

The HACM utilizes the full application interview to discuss the family's circumstances in greater detail, to clarify information which has been provided by the family, and to ensure that the information is complete. The interview is also used as a vehicle to meet the informational needs of the family by providing information about the application and verification process, as well as to advise the family of other HACM services or programs which may be available.

All adult family members are required to attend the interview and sign the housing application packet.

Exceptions may be made for students attending school out of state or for members for whom attendance would be a hardship.

If an applicant fails to appear for a pre-scheduled appointment, the HACM will automatically schedule a second appointment. If the applicant misses the second appointment without prior approval, the application is denied and the pre-application may be removed from the wait list.

If the interview appointment letter is returned to the HACM with a forwarding address, the HACM will make no more than two (2) attempts to forward the appointment letter to the new forwarding address before canceling the application.

Reasonable accommodations will be made for persons with a disability who require an advocate or accessible offices. A designee will be allowed to participate in the interview process, but only with permission of the person with a disability.

If an application is denied due to failure to attend the full application interview, the applicant will be notified in writing and offered an opportunity to request an informal review (see Chapter 19 "Complaints and Appeals" of this Administrative Plan).

All adult members must sign the HUD Form 9886, Release of Information, the application, the declarations and consents related to citizenship/immigration status and any other supplemental forms required by the HACM. Applicants will be required to sign specific verification forms for information which is not covered by the HUD Form 9886. Failure to do so will be cause for denial

of the application.

Every adult household member must sign a consent form to release criminal conviction records and to allow the HACM to receive records and use them in accordance with HUD regulations.

If the HACM determines at or after the interview that additional information or document(s) are needed, the HACM will request the document(s) or information in writing. The family will be given ten (10) business days to supply the information.

If the letter requesting the additional information is returned to the HACM with a forwarding address, the HACM will make no more than one (1) attempt to forward the appointment letter to the new forwarding address.

If the information is not supplied in this time period, the HACM will provide the family a notification of denial for assistance (see Chapter 19 “Complaints and Appeals” of this Administrative Plan).

**H. VERIFICATION [24 CFR 982.201(e)]**

Information provided by the applicant will be verified using the verification procedures in Chapter 7, “Verification Procedures” of this Administrative Plan. Family composition, income, allowances and deductions, assets, full-time student status, eligibility and rent calculation factors, and other pertinent information will be verified. Verifications may not be more than sixty (60) days old at the time of issuance of the voucher.

If the HACM determines at or after the interview that additional information or document(s) are needed, the HACM will request the document(s) or information in writing. The family will be given ten (10) business days to supply the information.

If the information is not supplied in this time period, the HA will provide the family a notification of denial for assistance (see Chapter 19, “Complaints and Appeals” of this Administrative Plan).

**I. FINAL DETERMINATION AND NOTIFICATION OF ELIGIBILITY [24 CFR 982.201]**

After the verification process is completed, the HACM will make a final determination of eligibility. This decision is based upon information provided by the family, the verification completed by the HACM, and the current eligibility criteria in effect. If the family is determined to be eligible, the HACM will mail a notification of eligibility. A briefing will be scheduled for the issuance of a voucher and the family's orientation to the housing program.

## Chapter 4

### ESTABLISHING PREFERENCES AND MAINTAINING THE WAITING LIST [24 CFR

#### Part 5, Subpart D; 982.54(d)(1); 982.204, 982.205, 982.206]

#### **INTRODUCTION**

It is the HACM's objective to ensure that families are placed in the proper order on the waiting list and selected from the waiting list for admissions in accordance with the policies in this Administrative Plan.

This chapter explains the local preferences which the HACM has adopted to meet local housing needs, defines the eligibility criteria for the preferences and explains the HACM's system of applying them.

By maintaining an accurate waiting list, the HACM will be able to perform the activities which ensure that an adequate pool of qualified applicants will be available so that program funds are used in a timely manner.

#### **A. WAITING LIST Establishment [24 CFR 982.204]**

The HACM uses a single waiting list for admission to its HCV tenant-based assistance program. Except for special admissions, applicants will be selected from the HACM waiting list in accordance with policies and preferences and income targeting requirements defined in this Administrative Plan.

At the time of the pre-application, any information indicating the applicant may qualify for a local preference (e.g., an applicant's certification that they reside within the jurisdiction qualifying them for the Residency Preference) will be accepted without verification. Actual entitlement for a local preference will be verified at initial eligibility determination.

The waiting list will be maintained in accordance with the following guidelines:

- The pre-application will be a permanent file.
- Applicant name
- Family unit size (number of bedrooms family qualifies for under HACM subsidy standards)
- Date and time of the completed pre-application
- Information pertaining to possible qualification for a local preference
- Race and ethnicity of the head of household
- ~~Pre applications taken by a method other than lottery or random methodology will be maintained in order of date and time~~

If the HACM's waiting list for its public housing, project-based voucher, or moderate rehabilitation programs is open when the applicant is placed on the housing choice voucher program waiting list, the HACM must offer to place the applicant on these other waiting lists, as long as the other programs include units suitable for the application.

#### **APPLICANT STATUS WHILE ON WAITING LIST [CFR 982.202 (c), 982.204]**

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

Applicants are required to inform the HACM in writing of changes of their address within 10 business days of the occurrence. This will also assist the HACM in establishing and maintaining a

current and updated waiting list to effectively plan for future pre-application intake. Applicants are also required to respond to requests from the HACM to update information on their pre-application, or to determine their continued interest in assistance.

Families who are ineligible for the reason of only owing a debt to the HACM or any other Federal Housing Program will be allowed to have their pre-application placed on the waiting list. When the family is interviewed for placement into the Housing Choice Voucher Program, the family must pay the debt in full before the final eligibility process will continue.

If the family is determined to be ineligible based on the information provided in the pre-application, the HACM will notify the family in writing (in an accessible format upon request as a reasonable accommodation), state the reason(s), and inform them of their right to an informal review. Persons with disabilities may request to have an advocate attend the informal review as an accommodation. See Chapter 19 on, "Complaints and Appeals."

The waiting list will be maintained with accurate information.

### **APPLICANT PORTAL**

The Applicant Portal has been established for persons that make a pre-application with the HACM so that they may create an on-line account to review and update their personal information, including their current address, as well as indicate their continued interest in remaining on the waiting list. As our primary mode of communication with the applicant is by e-mail and/or regular U.S. mail, it is critical that we have a valid, current mailing address and/or e-mail address at all times so that we will be able to make contact with the applicant.

### **PURGING THE WAITING LIST [24 CFR 982.204 (c)]**

~~The primary goal in purging a waiting list is to obtain current information on interested applicants and to remove applicants no longer interested in participating in the program.~~

~~The waiting list will be purged as needed to ensure that all applicants and applicant information is current and accurate. To update the waiting list, the HACM will send an update request via first-class mail or e-mail to each family on the waiting list. The applicant will be asked whether the family continues to be interested in the program and will provide a deadline by which the family must respond. This update request will be sent to the last mail and/or e-mail address that the HACM has on record for the family. The collection of this form may be in an electronic format at the HACM's prerogative.~~

~~If no response is received by the deadline, the applicant is removed from the waiting list.~~

The waiting list will be purged as necessary. The HACM may notify applicants by mail or e-mail to ensure that the waiting list is current and accurate. The request to applicants will ask for confirmation of their continued interest.

Any mailings to the applicant which require a response will state that failure to respond within ten (10) business 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.

If an e-mail contact attempt is made, and the e-mail is rejected the HACM will send a letter via U.S. postal service. If the 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 mail is returned with a forwarding address, the HACM will make no more than one (1) attempt to forward the mail to the new forwarding address before removing the applicant from the wait list.

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 her/his designee determines there were circumstances beyond the person's control.

Applicants are required to contact the HACM periodically.

The HACM allows a grace period of thirty (30) days after completion of the purge to request a reinstatement. Applicants who respond during this grace period will be reinstated.

#### **GROUND FOR CANCELLATION FROM THE WAITING LIST**

The HACM will cancel the pre-application when the applicant does not respond to the HACM's request for response by a specific date, failure to attend a scheduled appointment or if a letter is returned by the Post Office.

Any mailings to the applicant which require a response by a specific deadline will state that failure to respond by the deadline will result in the applicant's name being removed from the waiting list.

If a letter is returned by the Post Office, the pre-application will be canceled without further notice, and the envelope and letter will be maintained in the file. Applicants may be reinstated after the HACM has conducted a review of the case and is approved. If the applicant did not respond to the HACM request for information or updates because of a family member's disability, this fact will be verified and documented, and the HACM will reinstate the applicant in the family's former position on the waiting list.

#### **B. SPECIAL ADMISSIONS [24 CFR 982.54(d), 982.203]**

If HUD awards a HACM program funding that is targeted for specifically named families, the HACM 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 HACM 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 Homeownership Act of 1990;
- A family residing in a project covered by a project-based Housing Choice Voucher HAP contract at or near the end of the HAP contract term;



- A non-purchasing family residing in a HOPE 1 or HOPE 2 project; and
- A family participating in the HUD-Veterans Affairs Supported Housing (VASH) program.

### C. INITIAL DETERMINATION OF LOCAL PREFERENCE QUALIFICATION

[24 CFR 982.207]

HUD permits the HACM to establish local preferences and 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 HACM to establish other local preferences, at its discretion. The HACM's local preferences are based on local housing needs and priorities.

The HACM uses the following local preference system:

Points:

**250 points: Independent Living Skills Program:** The HACM will designate 20 vouchers per calendar year dependent upon availability of funding. Foster youth/young adults transitioning from foster care and who lack adequate housing or are at risk for homelessness. Must be referred by partnering agency where MOU is in place.

**100 points: Homeless Preference:** The HACM will designate 100 vouchers per calendar year dependent upon availability of funding. Individuals or families who are referred to the HACM by a partnering homeless service organization that is a member of the Merced County Continuum of Care's centralized/coordinated assessment system and who meet the following criteria:

- An individual or family who lacks a fixed, regular and adequate nighttime residence meaning:
  - An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state or local government programs for low income individuals)
  - An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution
  - A primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport or camping ground
- Any individual or family who:
  - Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; **and**
  - Has no other residence; **and**
  - Lacks the resources or support networks, e.g. family, friend, and faith based or other social networks, to obtain other permanent housing

This preference shall be limited to applicants based on certification/referrals from identified agencies with which HACM has a written agreement. Eligibility criteria for referral will be

developed by the referring agency in conjunction with the HACM.

If it is determined that an applicant does not meet the criteria described therein, the applicant will lose their preference points and will be returned to applicable HACM waiting list/s.

**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.

**15 points: Residency Preference:** Families who live, work, or have been hired to work within Merced County and /or residents. 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.

**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 HACM action (emergency relocation, extensive rehabilitation and insufficient funding or other local disasters) as approved by Executive Director.

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.

### **Set Aside Vouchers for Advancement from Transitional Housing Assistance**

The HACM may at its discretion set-aside up to one hundred vouchers annually, when funding permits from its available HCV Tenant-Based Voucher allocation, to be used to assist Merced County individuals or families who are:

- Participating in a Supportive Housing Program, or Emergency Solutions Grants program; or by a partnering homeless service organization that is a member of the Merced County Continuum of Care's centralized/coordinated assessment system.
- Where all other considerations are equal, residents of the County of Merced will be selected before non-residents. These transitional housing applications may be accepted even when the waiting list is closed.
- An individual or family who lacks a fixed, regular and adequate nighttime residence meaning:
  - An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state or local government programs for low-income individuals)
  - An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution

- A primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport or camping ground
- Any individual or family who:
  - Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; **and**
  - Has no other residence; **and**
  - Lacks the resources or support networks, e.g. family, friend, and faith-based or other social networks, to obtain other permanent housing

**Independent Living Skills Program:** The HACM may designate 20 vouchers ~~per calendar year~~ annually, when funding permits. Foster youth/young adults transitioning from foster care and who lack adequate housing or are at risk for homelessness. Must be referred by partnering agency where MOU is in place

The HACM 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 pre-application.

#### **D. INITIAL DETERMINATION OF LOCAL PREFERENCE QUALIFICATION [24 CFR 982.207]**

At the time of application, an applicant's entitlement to a local preference may be made on the following basis. An applicant's certification that they qualify for a preference will be accepted without verification at the initial pre-application. When the family is selected from the waiting list for the final determination of eligibility, the preference will be verified.

If the preference verification indicates that an applicant does not qualify for the preference, the applicant will be returned to the waiting list without the local preference and given an opportunity for an informal review.

If, at the time the family applied, the preference claim was the only reason for placement of the family on the list and the family cannot verify their eligibility for the preference as of the date of application, the family will be removed from the list.

If the preference verification indicates that an applicant does not qualify for the preference, the applicant will be returned to the waiting list without the Local Preference and given an opportunity for an informal review.

Local preferences will not have the effect of disproportionately delaying or denying assistance to members of protected classes (race, color, religion, sex, national origin, age, familiar status, disability, sexual orientation or gender identity of any member of an applicant family).

#### **PREFERENCE DENIAL [24 CFR 982.207]**

If the HACM denies a preference, the HACM will notify the applicant in writing of the reasons why the preference was denied and offer the applicant an opportunity for an informal review with the Director of Housing Programs or her/his designee. If the preference denial is upheld as a result of the

review, or the applicant does not request a review, the applicant will be placed on the waiting list without benefit of the preference. Applicants may exercise other rights if they believe they have been discriminated against.

If the applicant falsifies documents or makes false statements in order to qualify for any preference, they will be removed from the waiting list.

**E. TARGETED FUNDING [24 CFR 982.203]**

When HUD awards special funding for certain family types, families who qualify are placed on the regular waiting list. When a specific type of funding becomes available, the waiting list is searched for the first available family meeting the targeted funding criteria.

Applicants who are admitted under targeted funding which are not identified as a special admission are identified by codes in the automated system. The following types of program funding may be “targeted” programs:

- Family Unification Program
- A family displaced because of demolition or disposition of a public housing project
- A family residing in a multi-family rental housing project when HUD sells, forecloses or demolishes the project
- Housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990 (41 U.S.C. 4101 et seq.) CFR 248.173)
- A non-purchasing family residing in a project subject to a homeownership program (under 24 CFR 248.173)
- 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
- A non-purchasing family residing in a HOPE 1 or HOPE 2 project.

**F. INCOME TARGETING**

In accordance with the Quality Housing and Work Responsibility Act (QHWRA) of 1998, each fiscal year the HACM will reserve a minimum of seventy-five percent (75%) of its Housing Choice Voucher new admissions for families whose income does not exceed the higher of Federal poverty level or thirty percent (30%) of the area median income. HUD refers to these families as “extremely low-income families.” The HACM will admit families who qualify under the extremely low-income limit to meet the income-targeting requirement, regardless of preference.

The HACM’s income targeting requirement does not apply to low income families continuously assisted as provided for under the 1937 Housing Act.

The HACM is also exempted from this requirement where the HACM is providing assistance to low income or moderate income families entitled to preservation assistance under the tenant-based program as a result of a mortgage prepayment or opt-out.

The HACM shall have the discretion, at least annually, to exercise the “fungibility” provision of the QHWRA. This provision allows the HACM to admit less than the minimum forty percent (40%) of its extremely low-income families in a fiscal year to its public housing program to the extent that the HACM’s admission of extremely low income families in the tenant-based assistance program exceeds seventy-five percent (75%) of all admissions during the fiscal year.

If exercising this option the HACM will follow the fungibility threshold limitations as set forth in

QHWRA legislation.

The discretion by the HACM to exercise the fungibility provision is also reflected in the HACM's Public Housing Admissions and Continued Occupancy Policy (ACOP).

## **G. PREFERENCE AND INCOME TARGETING ELIGIBILITY [24 CFR 982.207]**

### **Change in Circumstances**

Changes in an applicant's circumstances while on the waiting list may affect the families entitlement to a preference. Applicants are required to notify the HACM in writing or via applicant portal when their circumstances change.

When an applicant claims an additional preference, they will be placed on the waiting list in the appropriate order determined by the newly claimed preference. The exception to this is that if at the time the family applied, the waiting list was only open to families who claimed that preference. In such case, the applicant must verify that they were eligible for the first preference before they are returned to the waiting list with the new preference.

If the family's verified annual income at final eligibility determination does not fall under the extremely low-income limit, and the family was selected for income targeting purposes before families with a higher preference, the family will be returned to the waiting list.

### **Separate Waiting Lists for Housing Authority Programs (Moved from Chapter 3 pg. 3-8)**

In accordance with HUD regulations (24 CFR 982.205 (ii)) at the time an applicant is applying for HCV assistance, if pre-applications are being accepted for its Public Housing or Project-Based program, the family must be offered an opportunity to apply for the other program.

### **Project-Based Voucher Units Designated for Elderly or Disabled Families**

Developments specifically designed for elderly or disabled families may enter into contract under the Project-Based Voucher Program. An elderly family is defined as a family whose head, spouse, co-head, or sole member is a person who is 62 years of age or older. A disabled family is a family whose head, spouse, co-head, or sole member is a person with a disability [24 CFR 5.403]. Preference will be given in tenant selection for units in the project-based development designated for senior or disabled families. In selecting elderly or disabled families to fill these units, the HACM must also apply any preferences established in this Administrative Plan. The HACM may not discriminate against elderly or disabled families that include children (Fair Housing Amendments Act of 1988).

If there are not enough elderly families to occupy the units in a designated senior Project-Based Voucher development, the HACM may allow near-elderly families to occupy the units. A near-elderly family is a family whose head, spouse, or co-head is at least fifty to sixty-one (50-61) years old. When there are insufficient elderly families on the waiting list who wish to reside in a Project-Based Voucher Program development designated as a senior complex, near-elderly families will be selected.

### **Other Housing Assistance [24 CFR 982.205(b)]**

Other housing assistance means a Federal, State or local housing subsidy, as determined by HUD, including Public Housing.

The HACM may not take any of the following actions because an applicant has applied for,

received, or refused other housing.

- Refuse to list the applicant on the HACM waiting list for tenant-based assistance;
- Deny any admission preference for which the applicant is currently qualified;
- Change the applicant's place on the waiting list based on preference, date and time of application, or other factors affecting selection under the HACM selection policy; or
- Remove the applicant from the waiting list.

**SELECTION FROM THE WAITING LIST FOR ADMISSION [24 CFR 982.207]**

As vouchers become available for admission, the HACM will select from its waiting list. Preference and application information will be verified and updated.

**METHOD OF SELECTION [24 CFR 982.202(d) and 982.207 (c)]**

The HACM selects families from the waiting list according to preferences, lottery number and/or the date and time of the pre-application.

Families who are selected from the waiting list shall be contacted by the HACM to complete a full intake packet for eligibility. Applicants may not retain their place on the waiting list if they refuse to complete the application process.

The HACM will conduct its method of selection so there is a clear audit trail that can be used to verify each applicant has been selected in accordance with the method specified in this Administrative Plan.

In the event eligibility information, such as criminal background checks, is received or obtained after an applicant is issued a voucher, that information, if it shows ineligibility, will be used to deny/terminate admission/assistance in HCV Program.

## Chapter 5

### SUBSIDY STANDARDS

[24 CFR 982.402]

#### **INTRODUCTION**

HUD guidelines require that HACM's establish subsidy standards for the determination of family unit size, and that such standards provide for a minimum commitment of subsidy while avoiding overcrowding. The standards used for the unit size selected by the family must be within the minimum unit size requirements of HUD's Housing Quality Standards **and the HACM's subsidy standards**. This chapter explains the subsidy standards, which will be used to determine the voucher size (family unit size) for various sized families when they are selected from the waiting list, as well as the HACM's procedures when a family's size changes or a family selects a unit size that is different from the voucher.

#### **A. DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR 982.402]**

The HACM does not determine who shares a bedroom/sleeping room, **but there must be at least one person per bedroom on the voucher**. The HACM's subsidy standards for determining voucher size shall be applied in a manner consistent with Fair Housing guidelines.

**For subsidy standards, an adult is a person 18 years of age or older.**

All standards in this section relate to the number of bedrooms on the voucher, not the family's actual living arrangements.

The unit size on the voucher remains the same as long as the family composition remains the same, regardless of the actual unit size rented.

**The HACM will consider factors such as family characteristics including sex, age, or relationship. Persons of different generations may not be required to share a bedroom. Consideration will also be given for medical reasons and the presence of a live-in aide.**

**In accordance with PIH Notice 2010-51, the HACM may approve an additional bedroom for medical equipment if the need is documented by a health care provider. The actual equipment in the extra bedroom will be verified by the HACM during the annual inspection of the unit. If the extra bedroom is not being used for the intended purpose, the HACM must reduce the voucher size and corresponding payment standard at the family's next annual recertification.**

**In addition to the verification during the annual inspection of the unit, the HACM may, if applicable, verify the actual equipment in the extra bedroom during the initial inspection.**

**Generally, the HACM assigns one bedroom to two people within the following guidelines:**

- **The HACM provides one room for the Head of Household (with the spouse, Co-head, Registered Domestic partner, Boyfriend/Girlfriend of the Head of Household if any) and one additional room for every two persons regardless of age or gender.**
- **Foster children will be included in determining unit size only if they will be in**

the unit for more than ~~six (6)~~ (12) months.

- Single person families shall be allocated one (1) bedroom
- Live-in attendants will be provided a separate bedroom if the assisted unit is the live-in attendants principle residence. No additional bedrooms are provided for the attendant's family.
- Space may be provided for a child who is away at school but who lives with the family during school recesses.

**A single pregnant woman with no other family members must be treated as a two-person family. Single person families shall be allocated a zero or a one bedroom voucher depending on funding availability. Space may not be provided for a family member, other than a spouse, who will be absent most of the time, such as a member who is away in the military.**

#### GUIDELINES FOR DETERMINING VOUCHER SIZE

Voucher Size	Persons in Household	
	Minimum Number	Maximum Number
0 Bedroom	1	<del>1</del> 2
1 Bedroom	1	<del>2</del> 4
2 Bedrooms	<del>3</del> 2	<del>4</del> 6
3 Bedrooms	<del>5</del> 3	<del>6</del> 8
4 Bedrooms	<del>7</del> 4	<del>8</del> 10
5 Bedrooms	<del>9</del> 5	<del>10</del> 12
6 Bedrooms	<del>11</del> 6	<del>12</del> 14

#### B. EXCEPTIONS TO SUBSIDY STANDARDS [24 CFR 982.403(a) & (b)]

##### **A. EXCEPTIONS TO SUBSIDY STANDARDS (24 CFR 982.402(b)(8))**

*In determining family unit size for a particular family, the HACM may grant an exception to its established subsidy standards if the HACM determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances.*

*The HACM may grant an exception upon request as an accommodation for persons with disabilities. Circumstances may dictate a larger size than the subsidy standards permit when persons cannot share a bedroom due to a documented need, such as:*

- *A verified medical or health reason;*
- *Elderly persons or persons with disabilities who may require a live-in attendant;*

*Cases are determined on a case-by-case basis. The submission of an accommodation does not automatically entitle a family to a larger subsidy.*

*If a reasonable accommodation request is approved which requires a larger subsidy, the subsidy size will be increased at an interim recertification, effective the first day of the month following the date of the decision, or the date that the live-in aide passes the background check.*



~~whichever comes later.~~

~~The HACM will not issue a larger subsidy/voucher due to additions of family members other than by birth, adoption, marriage, or court-awarded custody.~~

~~Requests based on health-related reasons must be verified by a doctor, medical professional, or social service professional.~~

The HACM shall grant exceptions from the subsidy standards if the family submits a request and the HACM determines the exceptions are justified by the relationship, age, sex, health or disability of family members, or other individual circumstances.

Circumstances may dictate a larger size than the subsidy standards permit when persons cannot share a bedroom because of a need, such as a:

- Verified medical or health reason; or
- Elderly persons or persons with disabilities who may require a live-in attendant.

#### **Request for Exceptions to Subsidy Standards**

The family may request a larger sized voucher than indicated by the HACM's subsidy standards. Such requests must be made in writing within ten (10) calendar days of the Housing Authority's determination of bedroom size. The request must explain the need or justification for a larger bedroom. Documentation verifying the need or justification will be required as appropriate.

The HACM will not issue a larger voucher due to additions of family members other than by birth, adoption, marriage, or court-awarded custody of a current approved family member.

Requests based on health related reasons must be verified by a doctor, medical, or social service professional.

The HACM may approve an additional bedroom for medical equipment if the need is documented by a health care provider in accordance with PIH Notice 2010-51. The actual equipment in the extra bedroom will be verified by the HACM during the annual inspection of the unit. If the extra bedroom is not being used for the intended purpose, the HACM must reduce the voucher size and corresponding payment standard at the family's next annual recertification.

#### **HACM Error**

If the HACM errs in the bedroom size designation, the family will be issued a voucher of the appropriate size so that the family is not penalized.

#### **Changes for Applicants**

The voucher size is determined prior to the briefing by comparing the family composition to the HACM subsidy standards. If an applicant requires a change in the voucher size, based on the requirements of the HACM subsidy standards, the above referenced guidelines will apply.

#### **Changes for Participants**

The members of the family residing in the unit must have prior approval by the HACM. The

family must obtain prior approval of any additional family member before the new member occupies the unit except for additions by birth, adoption, or court-awarded custody, in which case the family must inform the HACM within ~~10 business days~~ thirty (30) days. The above referenced guidelines will apply.

The HACM may approve additional family members in the following cases:

- The spouse or partner of the Head of Household. (For a spouse, a Marriage License must be provided at the time of request.)
- The minor children of the approved spouse or approved domestic partner of the Head of Household.
- The disabled elderly parent(s) or grandparent(s) of the Head of Household approved spouse or approved domestic partner.

#### **Under housed Families (~~Unit too Small Size of Family~~)**

If a unit does not meet the HQS space standards because of an increase in family size (unit too small), the HACM ~~will issue a new voucher.~~ The family and the HACM will try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HACM will terminate the HAP contract in accordance with its terms. ~~must issue the family a new voucher of the appropriate size.~~

If an acceptable unit is available for rent by the family, the HACM must terminate the Housing Assistance Payment (HAP) Contract in accordance with its terms.

#### **Over housed Families (~~Unit too Large Size of Family~~)**

If a participant has a decrease in the family size, the family has the option to be issued a new voucher or remain in the unit they are currently renting. If the family chooses to remain in the unit, the subsidy standard will be lowered at the next annual reexamination. If the family chooses to move, the voucher issued will be for the correct subsidy standard. The amount the family pays for rent ~~should must be~~ be affordable and the tenant portion of rent and the current utility allowance cannot exceed 40% of their adjusted income at the time of lease-up (24 CFR 982.508). The HACM approved rent will be based on the payment standard for the number of bedrooms the family is eligible for or the actual number of bedrooms in the unit, whichever is less. In cases where the gross rent is less than the payment standard, it will be used as the payment standard.

The HACM will also notify the family of the circumstances under which an exception will be granted, such as:

- If a family with a disability is under-housed in an accessible unit.
- If a family requires the additional bedroom because of a health problem which has been verified by the HACM.
- The HACM and family have been unable to locate a unit within thirty (30) days.

### **C. UNIT SIZE SELECTED [24 CFR 982.402(c)]**

The family may ~~lease an otherwise acceptable dwelling unit with fewer bedrooms than the voucher size, provided the dwelling unit meets the applicable Housing Quality Standards space requirements.~~ select a different size dwelling unit than that listed on the voucher. There are three criteria to consider:

**Subsidy Limitation**

The family unit size as determined for a family under the HACM subsidy standard for a family assisted in the voucher program is based on the HACM's adopted payment standards. The payment standard for a family shall be the *lower of*:

- The payment standard amount for the family unit size; or
- The payment standard amount for the unit size rented by the family.

**Utility Allowance**

The utility allowance used to calculate the gross rent is the lesser of the size of the dwelling unit actually leased by the family or the voucher size issued

However upon the request of a family that includes a person with disabilities, the HACM must approve a utility allowance higher than the applicable amount of such a higher utility allowance is needed as a reasonable accommodation in accordance with HUD regulations in 24 CFR Part 8 to make the program accessible to and usable by the family member with a disability.

**Housing Quality Standards**

The standards allow two persons per living/sleeping room and permit maximum occupancy levels (assuming a living room is used as a living/sleeping area) as shown in the table below. The levels may be exceeded if a room, in addition to bedrooms and living room, is used for sleeping.

The family may lease an otherwise acceptable dwelling unit with more bedrooms than the family voucher size, provided it meets the initial affordability test, where the family does not pay more than 40% of their income towards rent and utilities.

**HQS GUIDELINES FOR UNIT SIZE SELECTED**

<b>Unit Size</b>	<b>Maximum Number in Household</b>
0 Bedroom	2
1 Bedroom	4
2 Bedrooms	6
3 Bedrooms	8
4 Bedrooms	10
5 Bedrooms	12
6 Bedrooms	14

## Chapter 6

### FACTORS RELATED TO TOTAL TENANT PAYMENT AND FAMILY SHARE DETERMINATION

[24 CFR Part 5, Subparts E and F; 24 CFR 982]

982.153, 982.317, 982.551

#### **INTRODUCTION**

The HACM will use the methods as set forth in this Administrative Plan to verify and determine that family income at admission and at **annual** reexamination is correct. The accurate calculation of annual income and adjusted income will ensure that families are not paying more or less money for rent than their obligation under the regulations.

This chapter defines the allowable expenses and deductions to be subtracted from annual income and how the presence or absence of household members may affect the Total Tenant Payment (TTP). Income and TTP are calculated in accordance with 24 CFR Part 5, Subparts E and F, and further instructions set forth in HUD notices and memoranda. The formula for the calculation of TTP is specific and not subject to interpretation. The HACM's policies in this chapter address those areas which allow the HACM discretion to define terms and to develop standards in order to assure consistent application of the various factors that relate to the determination of the TTP.

#### **A. INCOME AND ALLOWANCES [24 CFR 5.609]**

##### **Income**

Income includes all monetary amounts which are received on behalf of the family. For purposes of calculating the Total Tenant Payment, HUD defines what is to be calculated and what is to be excluded in the federal regulations. In accordance with this definition, all income which is not specifically excluded in the regulations is counted.

*Note: "Payee Income" received through the Social Security Administration by Head or Spouse for persons that do not reside in the subsidized household **will not** be included in the total family income. According to the Social Security Administration regulations, a Representative Payee is "authorized and directed to apply benefits certified on behalf of a beneficiary only for the use and benefit of the beneficiary."*

##### **Annual Income**

Annual income is defined as the gross amount of income anticipated to be received by the family during the **twelve** (12) months after certification or recertification. Gross income is the amount of income prior to any HUD allowable expenses or deductions, and does not include income which has been excluded by HUD. Annual income is used to determine whether or not applicants are within the applicable income limits.

Annual income means all amounts, monetary or not, which:

1. Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

2. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
3. Which are not specifically excluded in sections. “Excludable Income” and “Federally mandated Income Exclusions” located later in this section.
4. Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

Annual income includes, but is not limited to:

1. the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
2. The net income from the operation of a business of profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service Regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only described in the paragraph above, authorized in paragraph (b)(2) of this section. Any withdrawal of cash or asset from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
4. The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except lump-sum payments caused by delays in processing periodic payments for Social Security or SSI are not included as income);
5. Payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation and severance pay;
6. Welfare assistance payments. (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments: (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and (B) are not otherwise excluded.
7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
8. All regular pay, special pay and allowances of a member of the Armed Forces (except special pay to a family member serving in the Armed Forces who is exposed to hostile fire).
9. Any financial assistance, in excess of amounts received for tuition and any other required fees and charges, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.

**Adjusted Income**

Adjusted income is defined as the annual income minus any HUD allowable expenses and deductions.

HUD has five allowable deductions from annual income:

1. Dependent Allowance: \$480 for each family member (other than the head or spouse) who are minors or who are 18 and older and are full-time students or who are disabled.
2. Elderly/Disabled Allowance: \$400 per family for families whose head or spouse is 62 or over or disabled.
3. Allowable Medical Expenses: Deducted for all family members of an eligible elderly/disabled family.
4. Child Care Expenses: Deducted for the care of children under 13 when child care is necessary to allow an adult member to work, attend school, or actively seek employment.
5. Allowable Disability Assistance Expenses: Deducted for attendant care or auxiliary apparatus for persons with disabilities if needed to enable the individual or an adult family member to work.

**Excludable Income**

The following kinds of income are excluded:

- Any subsidy received for transitional prescription drug assistance and any discounts negotiated in connection with the Medicare prescription drug discount card
- Income from employment of children under the age of 18
- Payments received for foster children under the age of 18
- Payments received for foster children or foster adults including SSI/SSA
- Lump sum additions to the family assets (counted as assets)
- Medical reimbursements
- Income of live-in aide
- Full amount of student financial assistance (tuition and expenses related to attending an institution of higher education)
- Special armed forces pay
- Resident service stipends
- Sporadic income
- Holocaust reparation payments
- Earning for full-time students in excess of \$480 for each student 18 years or older (excluding spouse)
- Except for a person over the age of 23 with dependent children.

**C. MINIMUM RENT [24 CFR 5.630 5.616]**

“Minimum rent” is \$50. Minimum rent refers to the Total Tenant Payment (TTP) and includes the combined amount a family pays towards rent and/or utilities when it is applied.

**Hardship Requests for an Exception to Minimum Rent**

The HACM recognizes that in some circumstances even the minimum rent may create a financial hardship for families. The HACM will review all relevant circumstances brought to the HACM’s attention regarding financial hardship as it applies to the minimum rent. The following section states the HACM’s procedures and policies in regard to minimum rent financial hardship as set forth by the Quality Housing and Work Responsibility Act of 1998. HUD has defined

circumstances under which a hardship could be claimed. [24 CFR 5.630]

### **Criteria for Hardship Exception**

In order for a family to qualify for a hardship exception, the family's circumstances must fall under one of the following HUD hardship criteria:

- The family has lost eligibility or is awaiting an eligibility determination for Federal, State, or local assistance, including a family with a member who is a non-citizen lawfully admitted for permanent residence under the Immigration and Nationality Act, and who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.
- The family would be evicted as a result of the imposition of the minimum rent requirement.
- The income of the family has decreased because of changed circumstances, including:
  - Loss of employment
  - Death in the family
  - Other circumstances as determined by the HACM or HUD

### **HACM Notification to Families of Right to Hardship Exception**

The HACM will notify all families subject to minimum rents of their right to request a minimum rent hardship exception. "Subject to minimum rent" means the minimum rent was the greatest figure in the calculation of the greatest of thirty percent (30%) of monthly adjusted income, ten percent (10%) of monthly income, minimum rent or welfare rent.

If the minimum rent is the greatest figure in the calculation of TTP, HACM staff will include a copy of the notice regarding hardship request provided to the family in the family's file.

The HACM notification will also advise families the family that hardship exception determinations are subject to HACM review and hearing procedures.

The HACM will review all family requests for exception from the minimum rent due to financial hardships.

All requests for minimum rent hardship exceptions are required to be in writing.

The HACM will request documentation as proof of financial hardship. The HACM will use its standard verification procedures to verify circumstances which have resulted in financial hardship.

Requests for minimum rent exception must include a statement of the family hardship that qualify the family for an exception.

### **Suspension of Minimum Rent**

The HACM will grant the minimum rent exception to all families who request it, effective the first of the following month.

The minimum rent will be suspended until the HACM determines whether the hardship is:

- Covered by statute;
- Temporary or long term.

"Suspension" means that the HACM must not use the minimum rent calculation until the HACM

has made this decision.

During the minimum rent suspension period, the family will not be required to pay a minimum rent and the housing assistance payment will be increased accordingly.

If the HACM determines that the minimum rent is not covered by statute, the HACM will impose a minimum rent including payment for minimum rent from the time of suspension.

### **Temporary Hardship**

If the HACM determines that the hardship is temporary, a minimum rent will not be imposed for a period of up to ninety (90) days from the date of the family's request. At the end of the temporary suspension period, a minimum rent will be imposed retroactively to the time of suspension.

The HACM will offer a repayment agreement to the family for any such rent not paid during the temporary hardship period (In this Administration Plan for the payment agreement policy).

### **Long-Term Duration Hardships**

If the HACM determines that there is a qualifying long-term financial hardship, the HACM must exempt the family from the minimum rent requirements for as long as the hardship continues. The exemption from minimum rent shall apply from the first day of the month following the family's request for exemption.

### **Retroactive Determination**

The HACM will reimburse the family for any minimum rent charges which took effect after October 21, 1998, that qualified for one of the mandatory exceptions.

If the family is owed a retroactive payment, the HACM will provide reimbursement in the form of a cash refund to the family offset the family's future rent contribution payments by the amount in which the HACM owes the family.

The HACM's definition of a cash refund is a check made out to the family.

## **D. DEFINITION OF TEMPORARILY/PERMANENTLY ABSENT [24 CFR 982.54(d)(10), 982.551]**

The HACM must compute all applicable income of every family member who is on the lease, including those who are temporarily absent. In addition, the HACM must count the income of the spouse or the head of the household if that person is temporarily absent, even if that person is not on the lease.

"Temporarily absent" is defined as a member of the family who is away from the home due to, including but not limited to: military duty, for schooling, for a job—such as a spouse, who would normally live in the unit, is away from the unit for more than thirty (30) days. Temporarily absent is defined as away from the unit for more than 90 days. The income of persons permanently absent will not be counted. If the spouse is temporarily absent and in the military, all military pay and allowances (except hazardous duty pay when exposed to hostile fire and any other exceptions to military pay HUD may define) is counted as income.

It is the responsibility of the head of household to report changes in family composition. The HACM will evaluate absences from the unit using this policy.



**Absence of Any Member**

Any member of the household will be considered permanently absent if they are away from the unit for more than 60 consecutive days except as otherwise provided in this chapter. Members of the family who are in the military, members who are away to school, and members who are away from home due to a job are excluded as a permanently absent member, and considered a temporarily absent member, except for full time students. (See full time students below).

**Absence due to Medical Reasons**

If any family member leaves the household to enter a facility such as hospital, nursing home, or rehabilitation center, the HACM will seek advice from a reliable qualified source as to the likelihood and timing of their return. If the verification indicates that the family member will be permanently confined to a nursing home, the family member will be considered permanently absent. If the verification indicates that the family member will return in less than 90 consecutive days, the family member will not be considered permanently absent.

If the person who is determined to be permanently absent is the sole member of the household, assistance will be terminated in accordance with the HACM's "Absence of Entire Family" policy **later in this chapter**.

**Absence due to Full-time Student Status**

Full time students who attend school away from the home will be treated in the following manner:

A student (other than head of household or spouse) who attends school away from home but lives with the family during school recesses may, at the family's choice, be considered either temporarily or permanently absent.

If the family decides that the member is permanently absent, income of that member will not be included in total household income, the member will not be included on the lease, and the member will not be included for determination of voucher size.

**Absence due to Incarceration**

If the sole member is incarcerated for more than sixty (60) consecutive days, **s/he** they will be considered permanently absent. Any member of the household, other than the sole member, will be considered permanently absent if **s/he** they are incarcerated for sixty (60) consecutive days.

The HACM will determine if the reason for incarceration for consideration of taking action as appropriate.

**Absence of Children due to Placement in Foster Care**

If the family includes a child or children temporarily absent from the home due to placement in foster care, the HACM will determine from the appropriate agency when the child/children will be returned to the home.

If the time period is to be greater than twelve **(12) months**, from the date of removal of the child/ren, the voucher size will be reduced at the anniversary date or at time of the family moving. **If all children are removed from the home permanently, the voucher size will be reduced in accordance with the HACM's subsidy standards.**

### **Absence of Entire Family**

These policy guidelines address situations when the family is absent from the unit, but has not moved out of the unit. In cases where the family has moved out of the unit, the HACM will terminate assistance in accordance with appropriate termination procedures contained in this **Administrative Plan**.

Families are required to notify the HACM and the owner before they move out of a unit and to give the HACM information about any family absence from the unit.

Families must notify the HACM if they are going to be absent from the unit for **more than 14 consecutive days** **at least thirty (30) days before leaving the unit if they are going to be absent from the unit for more than thirty (30) consecutive days.**

If the entire family is absent from the assisted unit for more than sixty ( 60) consecutive days, the unit will be considered to be vacated and the assistance will be terminated.

If it is determined that the family is absent from the unit, the HACM will not continue assistance payments.

“Family Absence” means that no family member is residing in the unit. In order to determine if the family is absent from the unit, the HACM may:

- Write letters to the family at the unit;
- Telephone the family at the unit;
- Interview neighbors;
- Verify if utilities are in service; **and/or**
- Check with the Post Office.
- Notice from owner of unit

A person with a disability may request an extension of time as a reasonable accommodation, provided that the extension does not go beyond the HUD allowed **one hundred eighty (180) consecutive calendar days limit.**

If the absence which resulted in termination of assistance was due to a person's disability, and the HACM can verify that the person was unable to notify the HACM in accordance with the family's responsibilities, and if funding is available, the HACM may reinstate the family as an accommodation if requested by the family, as long as the period was within **one hundred eighty (180) days.**

### **Caretaker for Children**

If neither parent remains in the household **nor** and the appropriate agency has determined that another adult is to be brought into the assisted unit to care for the children for an indefinite period, the HACM will treat that adult as a visitor for the first sixty (60) days.

If by the end of that period, court-awarded custody or legal guardianship has been **ordered** awarded to the caretaker, the voucher will be transferred to the caretaker.

**If the appropriate agency cannot confirm the guardianship status of the caretaker, the HACM will review the status at ninety (90) day intervals.** If custody or legal guardianship has not been

**ordered** awarded by the court, but the action is in process, the HACM will secure verification from social services staff or the attorney as to the status.

If custody is awarded for a limited time in excess of stated period, **the HACM will state in writing that** the transfer of the voucher is for that limited time or as long as they have custody of the children. The HACM will use discretion as deemed appropriate in determining any further assignment of the voucher on behalf of the children.

The caretaker will be allowed to remain in the unit, as a visitor, until a determination of custody is made.

The HACM will transfer the voucher to the caretaker, in the absence of a court order, if the caretaker has been in the unit for more than **six (6) months 60 days/months** and it is reasonable to expect that custody will be granted.

When the HACM approves a person to reside in the unit as caretaker for the child/ren, the income should be counted pending a final disposition. The HACM will work with the appropriate service agencies and the landlord to provide a smooth transition in these cases.

If a member of the household is subject to a court order that restricts them from the home for more than **2 months ninety (90) consecutive days**, the person will be considered permanently absent.

#### **Minor coming into home**

If a participant on the program wants to allow a minor in the household who is not a child of any of the family members, the participant must provide all required papers for addition of a family member AND must get prior approval if there is not any court order regarding custody of child. The following must be acquired by the family to permanently add minor to family composition:

- Legal custody papers – court order as indicated in the above paragraphs under Caretaker. (Notarized statement not acceptable)
- 60 days to provide paperwork for court ordered custody or legal guardianship.
- If custody or legal guardianship has not been ordered by the court, but the action is in process, the HACM will secure verification from social services staff or the attorney as to the status.
- Written approval from the owner of the unit

During this time period, the minor child can be residing in unit if prior approval received from owner.

#### **FAMILY BREAKUP AND REMAINING MEMBER OF TENANT FAMILY**

Family Breakup (24CFR 982.315)

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

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the HACM must ensure that the victim retains assistance.

- If a court determines the disposition of property between the members of an assisted family members continue to receive assistance.

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

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

In the absence of a judicial decision or an agreement among the original family members, the HACM will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the HACM will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; (5) the recommendations of social service professionals; and (6) given to the adult member who initially applied, if another adult member was added at a later time.

*Note: If an adult member requests residual rights to the Voucher (head of household requests that other adult member receive the Voucher), the adult member who wishes to receive the Voucher, must have been an approved member of the household by the HACM for at least 6 months.*

The HACM shall require verification of the above circumstances. If either or both of the families do not provide the documentation requested by the HACM, termination of the Voucher for failure to supply requested verifications will occur.

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

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

If dependents are the only “remaining members of a tenant family” and there is no family member able to assume the responsibilities of the head of household, see the policy on “Caretaker for Children.”

A reduction in family size may require a reduction in the voucher family unit size.

#### **Live In Aides:**

A Live in Aide will not be approved to reside in the unit if the HUD definition of a live in aide is not met. Also, the HACM will also not approve the addition of the live in aide in the unit in any of the

following cases:

1. The live in aide has been on a federal housing program and evicted from public housing or terminated from Housing Choice Voucher due to program violation.
2. The live in aide owes any amounts of money to any federal housing program.
3. The live in aide has drug related criminal activity or violent criminal activity as pertains to this administrative plan, or HUD regulations.
4. The live in aide has employment outside of the home.
5. Another person is residing in the unit who is capable of providing the care for participant.
6. Participant requiring live in aide must supply the HACM with verification from a reliable, knowledgeable professional, such as a medical doctor, social worker or caseworker. The verification must demonstrate that a live-in aide is necessary and the family would not be equally well served by a home health care service or a care provider who does not live in the unit. This verification will be required to be given to the HACM not only at the initial time the live-in aide begins to reside in the subsidized unit but at every annual re-certification thereafter.
7. No other additional family members of live in care attendant may reside in unit with participant.

In instances where the family receives payments from Human Services through the In Home Supportive Services (IHSS) program, the live-in aide reported to the HACM must be the same person on record with IHSS.

The HACM may deem it necessary to re-verify the necessity of a live-in aide at any time.

The live-in aide's qualification for housing occupancy terminates when the individual needing the supportive services leaves the unit or fails to qualify for continued occupancy, or when the need for live-in aide assistance ceases. The live-in aide does not qualify for continued occupancy as a remaining member of the tenant family, even if they are related by blood, marriage or operation of law.

### **Visitors**

Visitors are not members of the family. If the person is a visitor and does not intend to become a "permanent" member of the family, the HACM does not have to consider this a change in family composition.

Any adult not included on the HUD 50058 form who has been in the unit more than fourteen (14) consecutive days (construed as overnight stays) **without HACM approval**, or a total of **thirty (30)** days in a **twelve (12)** month period, will be considered to be living in the unit as an unauthorized household member.

**Absence of evidence of any other address will be considered verification that the visitor is a member of the household.**

Statements from neighbors and/or the landlord, as well as other evidence presented, will be considered in making the determination. **Use of the unit address as the visitor's current residence for any purpose that is not explicitly temporary shall be construed as permanent residence.**

**Primary residence, as defined in legal opinion dated 9/11/90, and stated in the glossary terms, will be in effect for this HACM.**

The burden of proof that the individual is a visitor rests on the family. In the absence of such proof, the individual will be considered an unauthorized member of the household and the HACM will terminate assistance since prior approval was not requested for the addition.

Minors and college students who were part of the family but who now live away from home during the school year and are not considered members of the household may visit up to 120 calendar days per year without being considered a member of the household.

### **Joint Custody of Children**

If children are a part of an assisted household pursuant to a court order joint custody agreement, a document from the court indicating the nature of the custody should be submitted.

Children who are subject to a joint custody agreement but live in the unit at least 51% of the time will be considered members of the household. If both families are on the program or the waiting list, the child may be claimed by only one parent. The parents will be encouraged to make a decision as to which parent claims the child as a family member. (This does not pertain to the Family Unification Program in which families are reunited and may not have 50% custody of children but need a unit in order for the courts to allow family to have custody of children for certain period of time)

If there is no agreement by both parties, "51 percent of the time" is defined as 183 days of the year, (which do not have to run consecutively).

In some instances both parents will have joint custody of a child, and the child will reside with one parent more than 51 percent of the time, but the other parent will receive the TANF benefits. In these cases the HACM will do an investigation with the welfare department and will make a determination based on that investigation.

Other factors that the HACM will consider to determine subsidy standard and/or deductions are:

- Which family takes child as dependent on most recent Federal Income Tax Return.
- School records showing address of child.
- Who pays for the primary medical care of child.
- Any other court documents pertaining to custody or details of support for the child.

### **Reporting Additions to Owner and HACM**

Reporting changes in household composition to the HACM is both a HUD and a HACM requirement.

The family obligations require the family to request HACM approval to add any other family member as an occupant of the unit and to inform the HACM of the birth, adoption or court-awarded custody of a child. The family must request prior approval from the HACM to add additional family members to the household. This includes a request for a live-in aide. If any new family member is added, the income of the additional member will be included in the family income as applicable under HUD regulations.

**If the family does not obtain prior approval from the HACM, any person the family has permitted**

~~to move in will be considered an unauthorized household member, except a visitor.~~

~~In the event that a visitor continues to reside in the unit after the maximum allowable time, the visitor will be considered an unauthorized household member, and the HACM will take action to terminate the participant from the program.~~

Families are required to report any additions to the household, due to birth, adoption or court-ordered custody of a child, in writing to the HACM within 30 business days of the change.

In addition, the HACM will require the family to obtain prior written approval from the owner when there are additions to the family composition, unless the addition is due to birth, adoption or court-ordered custody.

The HACM will check criminal history for all adults requested to be added into a household to determine whether that person has violated any of the prohibited behaviors as referenced in the section on screening and termination's policy (Chapter 15, "Denial or Termination of Assistance") of this Administrative Plan.

The HACM will perform criminal history background checks to determine whether any household member is subject to a lifetime sex offender registration requirement, to include but not limited to the use of the Dru Sjodin National Sex Offender database located at [www.nsopw.gov](http://www.nsopw.gov).

If the family does not obtain prior written approval from the HACM, any person the family has permitted to move in will be considered an unauthorized household member. In the event that a visitor continues to reside in the unit after the maximum allowable time, the family must report it to the HACM in writing within thirty (30) days of the maximum allowable time.

HA ADMIN PLAN Page 6-17 An interim reexamination will always be conducted for any additions or deletions of family members, ~~time permitting to the household.~~ ~~Priority of interims for family compositions will be those changes of family composition which will result in a reduction of tenant's share of rent.~~ Any other changes that occur that result in the same rent or increase of tenant's share of rent will be processed as time permits.

**The HACM will not issue a larger voucher size due to additions of family members other than by birth, adoption, marriage or court-awarded custody.**

#### **Reporting Absences to the HACM**

Reporting changes in household composition is both a HUD and a HACM requirement.

If a family member leaves the household, the family must report this change to the HACM, in writing, ~~within ten (10) business days~~ within thirty (30) days of the change **and certify as to whether the member is temporarily absent or permanently absent.** This includes a live in aide.

The HACM will conduct an interim evaluation for changes which affect the **Total Tenant Payment (TTP)** in accordance with the interim policy, ~~or require the family to move in instances of a smaller unit needed under the certificate program.~~

#### **E. AVERAGING INCOME**

When annual income cannot be anticipated for a full twelve (12) months, the HACM may average

known sources of income that vary to compute an annual income, or annualize current income and conduct an interim reexamination if income changes.

If there are bonuses or overtime which the employer cannot anticipate for the next twelve (12) months, bonuses and overtime received the previous year will be used.

~~Income from the previous year may be analyzed to determine the amount to anticipate when third party or check stub verification is not available.~~

If, by averaging an estimate can be made for those families whose income fluctuates from month to month, this estimate will be used so ~~that the housing payment will not change from month to month~~ as to reduce the number of interim adjustments. The method used depends on the regularity, source and type of income.

#### F. MINIMUM INCOME

There is no minimum income requirement. ~~However, families who have a monthly income of \$300 or less, are required to complete Monthly Living Expenses Worksheet, Personal Declaration Form, Earned Income Statement and any other verification that may be required by the HACM every (60) days. The forms Family Obligations, Denial of Assistance, and the Applicant/Tenant Certification need to be completed only once during this time period, but can be completed more if the eligibility specialist deems is necessary. Families who report zero income are required to undergo an interim recertification every ninety (90) days.~~

~~Families that report zero (\$0) income will be required to provide information regarding their means of basic subsistence, such as food, utilities, transportation, etc., by completing a Monthly Expenditure Form.~~

~~The HACM may request credit checks for all adult members of families who report zero income. Where credit reports show credit accounts open and payments current, the HACM will take action to investigate the possibility of fraud or program abuse (see Chapter 17, "Program Integrity Addendum" of this Administrative Plan).~~

~~If the family's expenses exceed their known income, the HACM will make inquiry of the head of household as to the nature of the family's accessible resources.~~

#### G. INCOME OF PERSON PERMANENTLY CONFINED TO NURSING HOME [24 CFR 982.54(D) (10)]

If a family member is permanently confined to a hospital or nursing home and there is a family member left in the household, the HACM will calculate the ~~Total Tenant Payment by~~ income by using the following methodology and use the income figure which would result in a lower payment by the family:

- ~~Excluding~~ the income of the person permanently confined to the nursing home and give the family no deductions for medical expenses of the confined family member; ~~except or~~
- Include the income of the ~~confined~~ family member goes directly to the family member, then the income and deductions will be INCLUDED. ~~person permanently confined to the nursing home and give the family the medical deductions allowable on behalf of the person in the nursing home.~~



**H. REGULAR CONTRIBUTIONS AND GIFTS [24 CFR 5.609]**

Regular contributions and gifts received from persons outside the household are counted as income for calculation of the Total Tenant Payment (TTP).

Any contribution or gift received every ~~three~~ **six (6)** months or more frequently will be considered a “regular” contribution or gift. This includes rent and utility payments made on behalf of the family and other cash or non-cash contributions provided on a regular basis. It does not include casual contributions or sporadic gifts (see Chapter 7, “Verification Procedures” of this Administration Plan for additional information).

If the family's expenses exceed its known income, the HACM will ~~question~~ **inquire of the family regarding** contributions and gifts.

**I. ALIMONY AND CHILD SUPPORT**

Regular alimony and child support payments are counted as income for calculation of Total Tenant Payment (TTP). If the amount of child support or alimony received is less than the amount awarded by the court, the HACM will use the amount awarded by the court unless the family can verify that they are not receiving the full amount **and verification of item(s) below are provided.**

The HACM will accept verification that the family is receiving an amount less than the award if:

- The HACM receives verification from the agency responsible for enforcement or collection.
- **The family furnishes documentation of child support or alimony collection action filed through a child support enforcement/collection agency, or has filed an enforcement or collection action through an attorney.**
- It is the family's responsibility to supply a certified copy of the divorce decree.

**J. LUMP-SUM PAYMENTS [24 CFR 5.609]**

Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, are not included in income but may be included in assets.

Lump-sum payments caused by delays in processing periodic payments such as ~~(unemployment or welfare assistance)~~ are counted as income. Lump sum payments from the Social Security Administration (SSA) or ~~Supplemental Security Income (SSI)~~ are excluded from income, but any amount remaining will be considered an asset. Deferred periodic payments which have accumulated due to a dispute will be treated the same as periodic payments which are deferred due to delays in processing.

In order to determine the amount of retroactive tenant rent that the family owes as a result of the lump sum receipt:

- The HACM uses a calculation method which calculates retroactively or prospectively depending on the circumstances.

**Prospective Calculation Methodology**

If the payment is reported on a timely basis, the calculation will be done prospectively and will

result in an interim adjustment calculated as follows:

1. The entire lump-sum payment will be added to the annual income at the time of the interim.
2. The HACM will determine the percent of the year remaining until the next annual recertification as of the date of the interim (three months would be 25% of the year).
3. At the next annual recertification, the HACM will apply the percentage balance (75% in this example) to the lump sum and add it to the rest of the annual income.
4. The lump sum will be added in the same way for any interims which occur prior to the next annual recertification.

If amortizing the payment over one year will cause the family to pay the entire total contract rent as tenant rent, the HACM and family may enter into a Repayment Agreement, with the approval of the Director of Housing Programs, for a partial of the lump sum receipt, not to exceed 50% of the total amount.

#### **Retroactive Calculation Methodology**

The HACM will go back to the date the lump-sum payment was received, or to the date of admission, whichever is closer.

The HACM will determine the amount of income for each certification period, including the lump sum, and recalculate the tenant rent for each certification period to determine the amount due the HACM.

The family has the choice of paying this “retroactive” amount to the HACM in a lump sum. At the HACM's option, the HACM may enter into a payment agreement with the family. Otherwise, the family will need to pay the full amount due to the HACM. The amount owed by the family is a collectible debt even if the family becomes unassisted.

#### **Attorney Fees**

The family's attorney fees may be deducted from lump-sum payments when computing annual income if the attorney's efforts have recovered a lump-sum compensation, and the recovery paid to the family does not include an additional amount in full satisfaction of the attorney fees.

#### **K. CONTRIBUTIONS TO RETIREMENT FUNDS - ASSETS**

Contributions to company retirement/pension funds are handled as follows:

- While an individual is employed, count as assets only the amounts the family can withdraw without retiring or terminating employment.
- After retirement or termination of employment, count any amount the employee elects to receive as a lump sum.

#### **L. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE [24 CFR 5.609(b)(d)(3)]**

The HACM must count assets disposed of for less than fair market value during the two years preceding certification or reexamination. The HACM will count the difference between the market value and the actual payment received in calculating total assets.

Assets disposed of as a result of a foreclosure or a bankruptcy is not considered to be assets disposed of for less than fair market value. Assets disposed of as a result of a divorce or separation is not considered to be assets disposed of for less than fair market value.

The HACM's minimum threshold for counting assets disposed of for less than fair market value is \$1,000. If the total value of assets disposed of within a one-year period is less than \$1,000, they will not be considered an asset.

*Checking & Savings Accounts:*

If the total of both checking and savings account balances of a family are less than \$1,000, then the HACM will not verify the assets or count the income from such assets.

Where the family has net family assets in excess of \$5,000, the HACM must obtain supporting documentation (e.g. bank statements) from the family to confirm the assets.

**M. CHILD CARE EXPENSES [24 CFR 5.603]**

Child care expenses for children under **the age of thirteen (13) years old** may be deducted from annual income ~~where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education only to the extent such amounts are not reimbursed~~ **if they enable an adult to work or attend school full time, or to actively seek employment.** In the case of a child attending private school, only after-hours care can be counted as child care expenses.

~~Child care expenses cannot be allowed as a deduction if there is an adult household member capable of caring for the child who can provide the childcare.~~ **In cases where an adult family member is available to provide child care, child care expenses will not be allowed as a deduction unless there is a documented reason that the family member is unable to care for the child.**

Examples of those adult members who would be considered unable to care for the child include:

- The abuser in a documented child abuse situation; or
- A person with disabilities or older person unable to take care of a small child, as verified by a reliable knowledgeable source.

Allowable deductions for child care expenses are based on the following guidelines:

Child Care to Work

The maximum child care expense allowed cannot exceed the amount earned by the person enabled to work, which is included in the family's annual income. The "person enabled to work" will be the adult member of the household who earns the least amount of income from working.

Child Care for School

The number of hours claimed for child care may not exceed the number of hours the family member is attending school, including reasonable travel time to and from school.

**Amount of Expense**

**The HACM will survey the local care providers in the community and collect data as a guideline. If the hourly rate materially exceeds the guideline, the HACM may calculate the allowance using the guideline.**

**N. MEDICAL EXPENSES [24 CFR 5.603]**

When it is unclear in the HUD rules as to whether or not to allow an item as a medical expense, the Internal Revenue Service (IRS) Publication 502 will be used as a guide.

Non-prescription medicines and chiropractic care must be doctor recommended in order to be considered a medical expense. Non-prescription medicines will be counted toward medical expenses for families who qualify if the family furnishes legible receipts.

#### O. **MEDICARE DRUG PRESCRIPTION PROGRAM (Part D)**

##### Medicare Prescription Drug Benefits

The HACM must treat any Medicare prescription drug discount cards and transitional assistance received by a family as a standard medical deduction so that the family continues to receive a deduction for the full cost of its prescription drugs.

- This means that neither the drug discount nor the transitional assistance should be considered in reimbursement for the purpose of calculating the family's medical expense deduction.
- This also means that the HACM must verify the FULL cost of the family's prescription drugs, not the out-of-pocket cost to the family.

This includes bills credited to credit cards. Deductions will not be given, except for the monthly minimum amount the credit card company demands monthly. Deductions will not be given for medical expenses credited to some other person's credit card, such as parents of disabled person.

Medical deductions will not be given for the buying or repair or upkeep of a car, even if car is equipped for the disabled.

Medical insurance, however, is considered an anticipated medical deduction.

Nonprescription medicines must be doctor-recommended in order to be considered a medical expense, and family must furnish legible receipts.

Acupuncture, Acupressure, herbal medicines and chiropractic services will be considered allowable medical expenses.

The HACM will require a family to obtain verification on a "service" animal that:

~~The animal is a certified service dog.~~

In addition, the HACM will require the family to obtain **a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.**

Medical expenses that may be allowed for a service animal include:

- Food
- Medical expenses, including well-care for the animal
- Additional training expenses, only if it mandated by the organization where the service animal originated. Verification will be required.
- Reasonable mileage costs to obtain medical services

Medical expenses will not be given for a service animal for the following:

- Toys
- Kennel fees, unless due to hospitalization of the animal
- Expenses relating to taking animal to dog show, including fee for dog shows, mileage, kennel fees or any supplies for the service animal
- Any magazines or publications of whatever source
- Special diet food, unless with a veterinarian's written verification of the need

Under no circumstances will medical expenses be allowed for a service animal without verification of amount spent, which includes an original receipt showing address, phone number, and name of seller. In addition, credit card bills cannot be submitted in lieu of original receipts. Vague verifications, such as receipts showing "dog supplies", will not be acceptable. The receipt must reflect clearly what each item is.

When it is unclear in the HUD rules as to whether or not to allow an item as a medical expense, IRS Publication 502 will be used as a guide, including the cost of mileage which will be allowed.

Medicare prescription drug coverage is insurance that covers both brand-name and generic prescription drugs at participating pharmacies. Medicare prescription drug coverage provides protection for people who have very high drug costs. Everyone with Medicare, regardless of income, health status, or prescription drug usage, will have access to prescription drug coverage beginning on January 1, 2006, as follows:

- Low income families with limited assets will qualify, but family must enroll in a plan that meets their prescription drug needs.
- Persons receiving Supplemental Security Income (SSI) will automatically qualify.
- A one-time \$600 subsidy (transitional assistance) will be provided to eligible Medicare beneficiaries. This subsidy must be excluded as income. The family may provide this verification (if not, the HACM will need to do a third-party verification).
- Un-reimbursed out-of-pocket expenses for prescription drugs must be counted in the family's medical expense deduction.
- Some persons may be required to pay a monthly premium up to \$37 which will be counted as a medical deduction. The family may pay the premium directly or it may be deducted directly from their SSI check.

Families are not required to report they have enrolled until their next recertification.

- P. PRO-RATION OF ASSISTANCE FOR "MIXED" FAMILIES [24 CFR 5.520] Applicability**  
 Pro-ration<sup>g</sup> of assistance must be provided to any "mixed" applicant or participant family. A "mixed" family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible members.

“Mixed” families that were participants on June 19, 1995, and that do not qualify for continued assistance must be offered prorated assistance. (See Chapter 12, “Recertifications.”). Effective November 29, 1996, Continued Assistance Families who are mixed families will now be pro-rated according to HACM’s interim policy. (24 CFR Part 5 Interim Rule/Revised Restrictions on Assistance to Noncitizens dated November 29, 1996). Applicant mixed families are entitled to prorated assistance. Families that become mixed after June 19, 1995, by addition of an ineligible member are entitled to prorated assistance.

### Pro-rated Assistance Calculation

Pro-rated assistance is calculated by determining the amount of assistance payable if all family members were eligible and multiplying by the percent of the family members who actually are eligible. ~~Total Tenant Payment is the gross rent minus the prorated assistance.~~ Calculations for each housing program are performed on the HUD 50058 form.

## Q. INCOME CHANGES RESULTING FROM WELFARE PROGRAM REQUIREMENTS

The HACM will not reduce the rental contribution for families whose welfare assistance is reduced specifically because of:

- Fraud by a family member in connection with the welfare program;
- Failure to participate in an economic self-sufficiency program; and/or
- Noncompliance with a work activities requirement.

However, the HACM will reduce the rental contribution if the welfare assistance reduction is a result of:

- The expiration of a lifetime time limit on receiving benefits;
- A situation where a family member has **not** complied with welfare agency economic self-sufficiency or work activities requirements but cannot or has not obtained employment, such as:
- The family member has complied with welfare program requirements, but the durational time limit, such as a cap on the length of time a family can receive benefits, causes the family to lose their welfare benefits.

Imputed welfare income is the amount of annual income not actually received by a family as a result of a specified welfare benefit reduction that is included in the family’s income for rental contribution.

Imputed welfare income is not included in annual income if the family was not an assisted resident at the time of sanction.

The amount of imputed welfare income is offset by the amount of additional income a family receives that begins after the sanction was imposed.

When additional income is at least equal to the imputed welfare income, the imputed welfare income is reduced to zero.

### Verification before Denying a Request to Reduce Rent

The HACM will obtain written verification from the welfare agency stating that the family's benefits have been reduced for fraud or noncompliance with economic self-sufficiency or work

activities requirements *before* denying the family's request for rent reduction.

The welfare agency, at the request of the HACM, will inform the HACM of:

- Amount and term of specified welfare benefit reduction for the family;
- Reason for the reduction; and
- Subsequent changes in term or amount of reduction.

### Cooperation Agreements

~~The HACM has a written cooperation agreement in place with the local welfare agency which assists the HACM in obtaining the necessary information regarding welfare sanctions.~~

## **R. UTILITY ALLOWANCE AND UTILITY REIMBURSEMENT PAYMENTS [24 CFR 982.513, 982.517]**

~~When funding is available, the HACM will provide families an allowance for tenant paid utilities. The same utility allowance schedule is used for all tenant-based programs.~~

~~The utility allowance is intended to help defray cover the cost of utilities not included in the rent and is subtracted from Total Tenant Payment to establish the family's rent to the landlord. The allowances is are based on the typical actual rates and average consumption studies, not on a family's actual consumption. cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. Allowances are not based on an individual family's actual energy consumption.~~

~~As per the FY 2014 Consolidated Appropriations Act, the utility allowance will be based on the lower of the actual unit size or the voucher bedroom size.~~

~~A family with a 2 bedroom voucher that chooses to lease a 3 bedroom unit will now have the 2 bedroom utility allowance applied. The HACM must make an exception if necessary as a reasonable accommodation for a family that includes a person with disabilities.~~

~~The new rule on utility allowances is to be applied for all new admissions. For current, program participants, the new rule must be applied at the family's next annual reexamination.~~

~~An allowance for tenant paid air conditioning will be provided in the utility allowance for the Merced County jurisdiction.~~

The HACM will review the utility allowance schedule annually. If the review finds a utility rate has changed by 10 percent or more since the last revision of the utility allowance schedule, the schedule will be revised to reflect the new rate. Revised utility allowances will be applied in a participant family's rent calculation at their next reexamination.

~~Where families provide their own range and refrigerator, the HACM will establish an allowance adequate for the family to purchase or rent a range or refrigerator, even if the family already owns either appliance. Allowances for ranges and refrigerators will be based on the lesser of the cost of leasing or purchasing the appropriate appliance over a 12 month period.~~

~~When the calculation on the HUD 50058 results in a utility reimbursement payment due the family [24 CFR 982.514(b)], the HACM will provide a utility reimbursement payment for the family each month. The check will be made out directly to the client.~~

The HACM's utility allowance schedule and the utility allowance for an individual family must include the utilities and services that are necessary in the locality to provide housing that complies with the housing quality standards. The HACM may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

The HACM must classify utilities in the utility allowance schedule according to the following general categories: space heating, air conditioning, cooking, water heating, water, sewer, trash collection, other electric, refrigerator (for tenant-supplied refrigerator), range (for tenant-supplied range); and other services as specified by HUD.

A tenant-paid air conditioning allowance will be provided throughout our jurisdiction. The air conditioning allowance will only be granted to families in the area when the HACM has confirmed that the unit actually has an air conditioner in the unit.

The approved utility allowance schedule is given to families along with their voucher. The utility allowance is based on the actual voucher size issued to the family.

When the calculation on the HUD 50058 form results in a utility reimbursement payment due to the family, the HACM may make a utility reimbursement payment directly to the gas and electric company that provides services to the family's assisted unit. The check will be made out directly to the gas and electric company.



**Chapter 7**  
**VERIFICATION**  
**PROCEDURES [24 CFR Part 5,**  
**24 CFR 982.516]**

**INTRODUCTION**

HUD regulations require that the factors of eligibility and Total Tenant Payment be verified by the HACM. HACM staff will be trained to explain to applicants/participants the verification procedures including the types of information that will be verified and the methods used. **HACM staff will obtain written verification from independent sources whenever possible and will document tenant files whenever third party verifications are not possible as to why third party verification was impossible to obtain.**

Applicants and program participants must provide true and complete information to the HACM whenever information is requested. The HACM's verification requirements are designed to maintain program integrity. This chapter explains the HACM's procedures and standards for verification of preferences, income, assets, allowable deductions, family status, and changes in family composition. The HACM will obtain proper authorization from the family before requesting information from independent sources.

~~HACM Staff will verify applicant and participant information using the six levels of verification including: Upfront (UIV) Verification/Enterprise Income Verification (EIV) HUD System; UIV (non HUD System); Tenant provided third party documents; third party written; third party oral; and, as a final resort, tenant self declaration/certification.~~

~~HACM reserves the right to use other reasonable methods of verification in addition to those methods set forth in this chapter. HACM reserves the right to determine whether or not certain verification submitted is sufficient and whether further verification will be required.~~

**A. METHODS OF VERIFICATION AND TIME ALLOWED [24 CFR 982.516]**

The HACM will verify information through the **six methods following** methods of verification acceptable to HUD in the following order:

- ~~1. UIV/EIV HUD System~~
- ~~2. UIV (non HUD System)~~
- ~~3. Tenant provided third party documents~~
- ~~4. Third party written~~
- ~~5. Third party oral~~
- ~~6. Tenant self declaration/certification~~

~~The HACM will allow 5 business days to obtain other types of verifications before going to the next method and 10 business days for return of third party verifications. The HACM will document the file as to why UIV/EIV and/or Tenant provided third party documents were not used.~~

~~All participant provided documents must be dated within 60 calendar days of the date they are provided to the HACM.~~

For applicants, verifications may not be more than 60 days old at the time of Voucher issuance. Third party verifications must be no more than 120 days at time of processing.

The HACM will ensure that there is a valid HUD Form 9886 for each household member who are 18 years of age or older in the applicant/participants file. The household will also sign authorizations for each of the information sources to release specified information.

Note: In determining annual income, the HACM will use actual past income received within the last 12 months.

HACM will use the most recent 12 months of income information available in EIV to use actual past income. Because this EIV report will give actual earnings data verified by a third party, the program participant is no longer required to provide third party documentation (e.g. pay stubs, payroll summary report, unemployment benefit notice).

HACM will continue to verify income from sources not available in EIV and will use the same time period for both wage and non wage income.

(As per HUD PIH Notice 2013-03)

**Enterprise Income Verification (EIV):** The HACM 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 HACM to check a variety of income sources for all family members, regardless of income sources reported by applicants and participants.

The HACM 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 and to the receiving HA during a portability transfer (the Administrative Plan). EIV data of minors may be provided to the minor's parent or guardian.

#### **Upfront Income Verification (UIV):**

Up-Front income verification (UIV/EIV) refers to the HACM'S use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. Currently, the HACM uses HUD's Enterprise Income Verification (EIV) system. HUD's EIV system contains data showing earned income, unemployment benefits, Social Security and SSI benefits for participant families. HUD requires that the HACM use the EIV system.

The purpose of the EIV/UIV data is to VALIDATE tenant-reported income and supplement tenant- provided documents.

Use of the EIV/UIV system simplifies the verification process because:

- Tenant reports income
- Tenant provides the HACM with current documentation
- The HACM consults the UIV/EIV system and prints income details report

- If additional information is not needed, the HACM uses the current tenant-provided documents to calculate anticipated annual income. (If additional income is needed, the HACM will request written third-party verification).

There may be legitimate differences between the information provided by the family and UIV/UIV generated information. If the family disputes information provided by the UIV/EIV system, the HACM staff will refer to the procedural guidelines on how to resolve this issue. No adverse action can be taken against a family until the HACM has independently verified the UIV/EIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process.

Although UIV/EIV replaces third party verification, third party verification may continue to be used to complement UIV/EIV such as when there is a discrepancy between documents provided by the participant or when the tenant disputes the information received via UIV/EIV matching.

### **Tenant Provided Documents**

In the event that UIV/EIV is unavailable, the HACM will note the file accordingly and utilize documents provided by the family as the primary source if the documents provided are complete and authentic information.

The HACM will accept verifications in the form of computerized printouts by the family from the following:

- Social Security Administration
- Veteran's Administration
- Welfare Assistance
- Unemployment Compensation Board
- City or County Courts
- Banking institutions
- Medical institutions
- Educational institutions
- District Attorney's Office
- Printed wage stubs
- Computer print outs from the employer
- Signed letters (provided that the information is confirmed by phone or notarized statement)
- Other documents noted in this Chapter as acceptable verification

### **Written Third Party Verification:**

Third party verification is used to verify information directly with the source. Third party written verification forms will be sent and returned via first class mail or by fax machine. The family will be required to sign an authorization for the information source to release the specified information.

Verifications received electronically directly from the source are considered third party written

**verifications.**

~~Third party verification forms will not be hand carried by the family under any circumstances unless the family returns verification in the form of computerized printouts which clearly indicate the source of the information.~~

An original or authentic document generated by a third party source dated either within the 60-day period preceding the reexamination or the HACM 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:

- Paystubs or payroll summary report
- Employer notice/letter of hire/termination
- SSA benefit verification letter
- Bank statements
- Child support payment stubs
- Welfare benefit letters and/or printouts
- Unemployment monetary benefit notices
- Pharmacy printouts

The HACM is required to obtain at a minimum, two current and consecutive pay stubs for determining annual income from wages. The HACM may request six current and consecutive paycheck stubs. For new income sources or when two pay stubs are not available, the HACM 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 HACM interview/determination or request date) are acceptable for confirming dates of income.

The HACM 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 is unable to provide the requested document(s), ask the participant/household member to utilize one of 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 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 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 HACM with the original SSA benefit letter. The HACM should make a photocopy of the document for the HACM file and return the original document to the individual. The HACM should use the listed gross benefit amount to calculate annual income from social security benefits. SSA encourages recipients to use the SSA's website to request *Proof of Income Letters*.

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

**Traditional Written Third Party Verification:** Traditional third party written 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 family will be required to sign an authorization for the information source to release the specified information.

**Oral Third Party Verification:** Oral third party verification will be used when written third party verification is delayed or not possible. When third-party oral verification is used, staff will be required to complete the HACM created form designed for this purpose document in the file, noting with whom they spoke, the date and time of the conversation, and the facts provided.

~~The HACM will accept Faxed documents.~~

- If third party verification is received after documents have been accepted as provisional verification, and there is a discrepancy, the HACM will where is appropriate the rent will be recalculated and a rent change letter will be sent to reflect the corrected tenant portion oral third party is not available, the HACM will document the attempts and move on to the next method of verification, “non-third party verification”. The HACM will accept faxed documents and will accept photo copies provided the information is confirmed over the phone.

#### **Self-Certification/Self-Declaration**

When verification of reported income or expenses cannot be made by third-party verification or review of documents, families will be required to submit a self-certification.

Self-certification means a statement under penalty of perjury

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

**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 HACM is required to document on the MOV Form the reason(s) why third party verification was not available.

The HACM **must** request written third party verification under the following circumstances:

- When the tenant disputes the EIV information and is unable to provide acceptable documentation to support his/her dispute (24 CFR 5.236(b));
- When the HACM requires additional information that is not available in EIV and/or

- the tenant is unable to provide the HACM with current acceptable tenant-provided documentation. Examples of additional information, includes but is not limited to:
- Effective dates of income (i.e. employment, unemployment compensation, or social security benefits)
  - For new employment: pay rate, number of hours worked per week, pay frequency, etc.
  - Confirmation of change in circumstances (i.e. reduced hours, reduced rate of pay, temporary leave of absence, etc.).

**B. RELEASE OF INFORMATION [24 CFR 5.230]**

~~All adult family members will be required to sign specific authorization forms when information is needed that is not covered by the HUD form 9886, Authorization for Release of Information/Privacy Act Notice.~~

Each family member age 18 years and older and each family head and spouse, regardless of age will be required to sign the HUD 9886 Release of Information/Privacy Act Form. In addition, family members will be required to sign specific authorization forms when information is needed that is not covered by the HUD 9886, Release of Information/Privacy Act Notice.

Each member requested to consent to the release of specific information will be provided with a copy of the appropriate forms for their review and signature.

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

Family refusal to cooperate with the HUD prescribed verification system will result in denial of admission or termination of assistance because it is a family obligation to supply any information and to sign consent forms requested by the HACM or HUD.

**C. COMPUTER MATCHING 24 CFR 5.234**

~~The HACM has implemented computer matching through the Human Services Department of Merced County to verify TANF (Temporary Assistance to Needy Families). For each social security number submitted to the Welfare Department the HACM has a corresponding Federal Privacy Act Statement signed by the family member in each family's file. A signed Memorandum of Understanding has been executed between the HACM and the Human Services Department.~~

~~Where allowed by HUD and/or other State or local agencies, computer matching will be done.~~

~~The HACM will utilize the HUD established computer-based Employment Income Verification (EIV) system for obtaining Social Security benefits, Supplemental Security Income, benefit history and benefit income discrepancy reports from the Social Security Administration, employment and unemployment benefits.~~

~~HUD can access income information and compare it to information submitted by PHAs on the 50058 form. HUD can disclose Social Security information to PHAs, but is precluded by law from disclosing Federal tax return data to PHAs. If HUD receives information from Federal tax return data indicating a discrepancy in the income reported by the family, HUD will notify the family of the discrepancy. The family is required to disclose this information to the HACM (24 CFR 5.240).~~

HUD's letter to the family will also notify the family that HUD has notified the HACM in writing that the family has been advised to contact the HACM. HUD will send the HACM a list of families who have received "income discrepancy" letters.

When the HACM receives notification from HUD that a family has been sent an "income discrepancy" letter, the HACM will:

- Wait 40 days after the date of notification before contacting tenant.
- After 40 days following the date of notification, the HACM will contact the tenant by mail and telephone asking the family to promptly furnish any letter or other notice by HUD concerning the amount or verification of family income.
- The HACM will fully document the contact in the tenant's file, including a copy of the letter to the family and written documentation of the phone call.

When the family provides the required information, the HACM will verify the accuracy of the income information received from the family, review the HACM's interim recertification policy, will identify unreported income, will charge retroactive rent as appropriate, and change the amount of rent or terminate assistance, as appropriate based on the information.

If tenant fails to respond to HACM:

- The HACM will ask HUD to send a second letter.
- After an additional 40 days, the HACM will ask HUD to send a third letter.
- After an additional 40 days the HACM will send a letter to the head of household, warning of the consequences if the family fails to contact the HACM within two weeks.

If tenant claims a letter from HUD was not received:

- The HACM will ask HUD to send a second letter with a verified address for the tenant.
- After 40 days, the HACM will contact the tenant family.
- If the tenant family still claims they have not received a letter, the HACM will ask HUD to send a third letter.
- After an additional 40 days, the HACM will set up a meeting with the family to complete IRS forms 4506 and 8821.
- If the tenant family fails to meet with the HACM or will not sign the IRS forms, the HACM will send a warning letter to the head of household, notifying the family that termination proceedings will begin within one week if the tenant fails to meet with the HACM and/or sign forms.

If tenant does receive a discrepancy letter from HUD:

- The HACM will set up a meeting with the family.
- If the family fails to attend the meeting, the HACM will reschedule the meeting.
- If the family fails to attend the second meeting, the HACM will send a termination warning.
- The family must bring the original HUD discrepancy letter to the HACM.

If tenant disagrees with the Federal tax data contained in the HUD discrepancy letter:

- The HACM will ask the tenant to provide documented proof that the tax data is incorrect.
- If the tenant does not provide documented proof, the HACM will obtain proof to verify the Federal tax data using third party verification.

Where allowed by HUD and/or other State or local agencies, computer matching may be done.

The HACM will utilize the HUD established computer-based Enterprise Income Verification (EIV) System for obtaining Social Security Benefits, Supplemental Security Income, benefit history and tenant income discrepancy reports.

When computer matching results in a discrepancy with information in the HACM records, the HACM will follow up with the family and other verification sources to resolve this discrepancy. If the family has unreported or underreported income, the HACM will follow the procedures in this Administrative Plan.

#### D. ITEMS TO BE VERIFIED [24 CFR 982.516]

Items to be verified include but are not limited to:

- All income ~~not specifically excluded by the regulations.~~
- Zero income status of household. Zero income applicants and residents may be required to complete a Monthly Expenditure form at each certification or recertification.
- Full-time student status including high school students who are 18 or over.
- Current assets including assets disposed of for less than fair market value in the preceding two years.
- Child care expense where it allows an adult family member to be employed, is actively seeking employment or to further their education.
- Total medical expenses of all family members in household whose head or spouse is elderly or disabled.
- Disability assistance expenses to include only those costs associated with attendant care or auxiliary apparatus for a disabled member of the family, which allows an adult family member to be employed.
- U.S. citizenship/eligible immigrant status.
- Social Security numbers for all family members over 6 years of age or older who have been issued a social security number.
- "Preference" status based upon local HACM preferences.
- Familial or marital status when needed for head or spouse definition.
- Disability for determination of preferences, allowances or deductions.
- Verification of Reduction in Benefits for Noncompliance. The HACM will obtain written verification from the welfare agency stating that the family's benefits have been reduced for fraud or noncompliance before denying the family's request for rent reduction.
- Legal Identity.
- Family Composition.

#### E. VERIFICATION OF INCOME [24 CFR 982.516]

~~Acceptable methods of verification, starting with UIV/EIV/third party written verification, will be used by the HACM whenever obtainable. This applies to income, assets, expenses, and any other factor which HUD requires verification in determining the applicant/participant's eligibility.~~

This section defines the methods the HACM will use to verify various types of income. Acceptable methods of verification include, in this order:



**Employment income**

HACM will access HUD UIV/EIV systems if available. Otherwise, verification forms requesting the employer to provide the following information will be sent to the employer:

Employment verification forms request the employer to specify the following:

- Dates of employment
- Amount and frequency of pay (If paid twice a month for example, on the 15<sup>th</sup> and the 30<sup>th</sup>, frequency of pay is 24 times per year. If paid every two weeks, frequency of pay is 26 times per year).
- Date of the last pay increase
- Likelihood of change of employment status and effective date of any known salary increase during the next 12 months
- Year-to-date earnings
- Estimated income from overtime, tips, bonus pay expected during next 12 months

Acceptable methods of verification include, in this order:

- ~~UIV/EIV system~~
- ~~Documents provided by applicants and program participants:~~
  - Check stubs or earning statements which indicate the employer's gross pay, frequency of pay or year to date earnings.
  - W-2 forms plus income tax return forms.
  - Employment verification form completed by employer
  - Telephone contact with employer documented on HACM's oral verification form.

The HACM may request the family's most recently submitted IRS federal income tax form. Applicants and program participants who do not have a copy of their most recently submitted IRS federal income tax form will be requested to obtain their income tax return directly from IRS. Where doubt regarding income exists, a referral to IRS for confirmation will be made on a case-by-case basis.

Applicants and program participants may be requested to sign an authorization for release of information from the **Internal Revenue Service (IRS)** for further verification of income.

**Self-certifications** or income tax returns signed by the family may be used for verifying self-employment income or income from tips and other gratuities. (For some self-employment types, where there is the potential for substantial income, self-certification should be unacceptable.)

**Social Security, Pensions, Supplemental Security Income (SSI), Disability Income**

Acceptable method of verification may include, in this order:

- ~~UIV/EIV computer matching conducted by HUD in Washington, D.C. and the Social Security Administration Office.~~
- ~~Benefit verification form completed by the local agency.~~
- ~~Most recent award or benefit notification letters.~~
- ~~Bank statements showing deposit from SSA~~

- Copies of SSA checks
- Enterprise Income Verification (EIV) System printout
- Benefit verification form completed by agency providing the benefits
- Award or benefit notification letters prepared and signed by the providing agency
- Computer report electronically obtained or in hard copy
- Bank statement for direct deposit

Social Security Benefit verification letters must be current and dated within 60 days of working up the file. Applicants/household members can obtain current benefit verification letters by:

- Calling the SSA at 1-800-772-1213
- Accessing the SSA website at [www.socialsecurity.gov](http://www.socialsecurity.gov)

### **Pensions, Disability Income**

Acceptable methods of verification may include, in this order:

1. UIV/EIV computer matching
2. Award or benefit notification letters prepared by the providing agency.
3. Computer report electronically obtained or in hard copy, from agency providing the benefits.
4. Benefit verification form completed by agency providing the benefits.

### **Unemployment Compensation**

Acceptable methods of verification may include, in this order:

1. UIV/EIV computer matching or computer matching agreement with a State Wage Information Agency
2. Payment stubs.
3. Computer report electronically obtained or in hard copy, from unemployment office (EDD) stating payment dates and amounts.

Verification form completed by the unemployment compensation agency

- Enterprise Income Verification (EIV) System printout
- Verification form completed by the Employment Development Department (EDD)
- Computer report electronically obtained or in hard copy, from unemployment office stating payment dates and amount.
- Payment stubs

### **Welfare (TANF) Payments or General Assistance**

Acceptable methods of verification may include, in this order:

1. Use of computer matching when available.
2. Use of Human Services Agency electronic phone verification system
3. Written statement from payment provider indicating the amount of grant/payment, start date of payments.
4. Computer generated Notice of Action or verification of amount of grant/benefits verified electronically through Human Services Agency.

1. HACM verification form completed by payment provider
2. Written statement from payment provider indicating the amount of grant/payment, start date of payments, and anticipated changes in payment in the next 12 months.
3. Computer-generated Passport to Services printout and/or Notice of Action.

~~Income of individuals who are enrolled at an institution of higher education and are applying for (or who are participants of the Section 8 assistance program in their individual capacity).~~

~~Income must be verified for the student according to all other regular verification requirements stated in this Administrative Plan, with the following exception:~~

~~As it relates to the verification of a parent(s) income, the HACM may accept from a parent(s) a declaration and certification of income; which includes a penalty of perjury.~~

### **Alimony or Child Support Payments**

Acceptable methods of verification may include, in this order:

- ~~1. Verification from Human Resources of child support disregard payments or verification from the Merced County Family Support Division.~~
- ~~2. Copy of latest check and/or payment stubs from Court Trustee or Individual providing payment. HACM must record the date, amount, and number of the check.~~
- ~~3. Copy of a separation or settlement agreement or a divorce/dissolution decree stating amount and type of support and payment schedules.~~
- ~~4. 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.~~
- ~~5. A written statement provided by person paying the support indicating all of the above.~~

1. HACM verification form completed by payment provider.
2. Copy of latest check and/or payment stubs from the issuing agency.
3. Oral verification from the District Attorney's Child Support Division.
4. Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.
5. Family's self-certification of amount received and the likelihood of support payments being received in the future, or that support payments are not being received.

If payments are irregular, the family must provide:

1. HACM verification form completed by parent provider or person paying the support.
2. A welfare notice of action showing amounts received by the welfare agency for child support.
3. A written statement from an attorney certifying that a collection or enforcement action has been filed.
4. An affidavit from the family indicating the amount(s) received.
5. A statement from the agency responsible for enforcing payments to show that the family has filed for enforcement.

### **Net Income from a Business**

In order to verify the net income from a business, the HACM will view IRS and financial documents from prior years and use this information to anticipate the income for the next **twelve (12)** months.

Acceptable methods of verification include:

- IRS Form 1040
- Schedule C (Small Business)
- Schedule E (Rental Property Income)
- Schedule F (Farm Income)
- Audited or un-audited financial statement(s) (profit and loss) of the business
- **Credit report or loan application**
- Documents such as manifests, appointment books, cash books, bank statements, and receipts will be used as a guide for the prior six months (or lesser period if not in business for six months) to project income for the next twelve (12) months. The family will be advised to maintain these documents in the future if they are not available.
- ~~Written statement signed by applicant/participant listing amount earned and expenses incurred, along with dates the business was operating~~
- **Family's self-certification as to net income realized from the business during previous years.**
- If the family is performing a cash based business and have not been in business long enough to have filed a tax return for the business, they will be required to complete a form detailing information regarding name of customers and amount paid and signature of customer. When the families' self-employment income is a new business, has sporadic income, or is not expected to earn the same amount as reported on the tax return, the HASM may conduct interim reevaluations every 120 days and provide the log information about customers, income and expenses

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expenses will be computed using straight-line depreciation rules.

### **Child Care Business**

If an applicant/participant is operating a licensed day care business, income will be verified as with any other business.

If the applicant/participant is operating a "cash and carry" operation (which may or may not be licensed), the HACM may require that the applicant/participant complete a form for each customer which indicates: name of person, name of children who are being cared for, phone number, number of hours the children are being cared for, method of payment (check/cash), amount paid, and signature of person.

If the family has filed a tax return, the family will be required to provide it.

**The HACM may conduct interim reevaluations every ninety (90) days and require the participant to provide a log with the information about customers and income.**

**If child care services were terminated, a third-party verification form may be sent to the parent whose child was cared for.**

### **Recurring Gifts**

When a family receives a recurring gift, the HACM will verify the income by mailing verification directly to the providing source. As a last resort, the HACM will accept the families self ~~declaration~~ certification. ~~In both verification requests, the HACM must have the following~~

**information:**

The family must furnish a self-certification which contains the following information:

- The person who provides the gifts
- The value of the gifts
- The regularity (dates) of the gifts
- The purpose of the gifts

The HACM will follow the third-party verification procedures as outlined in Section A of this chapter.

**Zero Income Status**

The HACM will employ the use of the UIV/EIV process (e.g., TANF, EDD work history) and other written third-party verification when the family claims to have no other income. Families claiming to have no income will be required to sign verification forms to determine that forms of income such as unemployment benefits, Temporary Assistance for Needy Families (TANF), SSI, etc. are not being received by the household.

The HACM may request information from the State Employment Development Department and the IRS.

The HACM may check records of other departments in the jurisdiction (such as government utilities) that have information about income sources of customers.

Families with zero income will be required to report to the HACM the first of each month by completing a Monthly Expense Form.

The HACM may run a credit report if information is received that indicates the family has an unreported income source.

**Minimum Income**

There is no minimum income requirement. Families who report zero (\$0) income are required to undergo an interim recertification every ninety (90) days. Families that report zero (\$0) income will be required to provide information regarding their means of basic subsistence, such as food, utilities, transportation, etc., by completing a Monthly Expenditure Form.

The HACM may request credit checks for all adult members of families who report zero (\$0) income. Where credit reports show credit accounts open and payments current, the HACM will take action to investigate the possibility of fraud or program abuse (see Chapter 17, “Program Integrity Addendum” of this Administrative Plan).

If the family’s expenses exceed their known income, the HACM will make inquiry of the head of household as to the nature of the family’s accessible resources.

**Full-time Student Status**

Only the first \$480 of the earned income of full time students, other than head or spouse, will be counted towards family income. Unemployment income is not considered as earned income and the full amount will be counted.

Financial aid, scholarships and grants received by full-time students are not counted towards family income. A full-time student is determined by the educational institution.

For purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition and any other required fees and charges) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children

Housing Authorities must include amounts of financial assistance an individual receives in excess of tuition and other required fees and charges when determining annual income in accordance with 24 CFR 5.609(b)(9). Verification of full-time student status includes:

1. Written verification from the registrar's office or other school official indicating enrollment for sufficient number of credits to be considered a full-time student by the educational institution.
2. Oral third-party must be documented in the applicant/participant file.
3. If verification cannot be received directly from the educational institution to the HACM, the file must be documented with the reason.

**F. INCOME FROM ASSETS [24 CFR 982.516]**  
**Checking/Savings Account Interest Income and Dividends**

Where the family has net family assets in excess of \$5,000, HACM must obtain supporting documentation (e.g. bank statements) from the family to confirm the assets.

Will be verified by:

Acceptable methods of verification include, in this order:

- Account statements, passbooks, certificates of deposit, or HACM verification forms completed by the financial institution.
- Broker's statements showing value of stocks or bonds and the earnings credited the family. Earnings can be obtained from current newspaper quotations or oral broker's verification.
- IRS Form 1099 from the financial institution, provided that the HACM must adjust the information to project earnings expected for the next **twelve (12)** months.

The HACM will require the necessary information to determine the current cash value of each asset (the net amount the family would receive if the asset were converted to cash).

**Interest Income from Mortgages or Similar Arrangements**

Acceptable methods of verification include, in this order:

- A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for next **twelve (12)** months. ~~A copy of the check paid by the buyer to the family is not sufficient unless a breakdown of interest and principal is shown.~~
- Amortization schedule showing interest for the **twelve (12)** months following the

effective date of the certification or recertification.

### **Net Rental Income from Property Owned by Family**

Acceptable methods of verification include, in this order:

- IRS Form 1040 with Schedule E (Rental Income).
- Copies of latest rent receipts, leases, or other documentation of rent amounts.
- Documentation of allowable operating expenses of the property: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.
- Lessee's written statement verifying rent payments to the family and family's self- certification as to net income realized.

### **Assets Disposed of for Less than Fair Market Value (FMV) During Two Years Preceding Effective Date of Certification or Recertification**

For all certifications and recertifications, the HACM will obtain the family's certification as to whether any member has disposed of assets for less than fair market value during the two years preceding the effective date of the certification or recertification.

If the family certifies that they have disposed of assets for less than fair market value, verification is required that shows:

- All assets disposed of for less than FMV;
- The date they were disposed of;
- The amount the family received; and
- The market value of the assets at the time of disposition. Third party verification will be obtained wherever possible.

## **G. VERIFICATION OF ASSETS**

### **Family Assets**

The HACM will require the information necessary to determine the current cash value of the family's assets (the net amount the family would receive if the asset were converted to cash). Acceptable verifications may include any of the following:

- HACM verification forms, letters, or documents completed by a financial institution or broker.
- Passbooks, checking/savings account statements, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
- Quotes from a stock broker or realty agent as to net amount family would receive if they liquidated securities or real estate.
- Real estate tax statements if the approximate current market value can be deducted from assessment.
- Financial statements for business assets.
- Copies of closing documents showing the selling price and the distribution of the sales proceeds.
- Appraisals of personal property held as an investment.
- Family's self-certification describing assets or cash held at the family's home or in safe deposit boxes.

## H. VERIFICATION OF ALLOWABLE DEDUCTIONS FROM INCOME [24 CFR 982.516]

### Child Care Expenses

The HACM will use documents in lieu of requesting third-party verification when an expense is less than \$500 annually and the family has original documents that support the detailed amount.

Written verification from the person who receives the payments is required. If the child care provider is an individual, they must provide a statement of the amount they are charging the family for their services.

Verifications must specify the child care provider's name, address, telephone number, Social Security number, the names of the children cared for, the number of hours the child care occurs, the rate of pay, and the typical yearly amount paid, including school and vacation periods.

~~Family's certification~~ The family must provide certification as to whether any of those payments have been or will be paid or reimbursed by outside sources.

### Medical Expenses and Disability Assistance Expenses

~~Families who claim medical expenses or expenses to assist a person/s with a disability will be required to submit a certification that expenses they are claiming are not reimbursed or paid by an outside individual, insurance company, governmental agency or other source. All expense claims will be verified by one or more of the methods listed below:~~

In order for a family to qualify for medical expenses, the head or spouse must be disabled. If the head or spouse is disabled, all medical expenses for all family members in the household will be counted. Families who claim medical expenses will be required to submit a certification as to whether or not any expense payments have been, or will be, reimbursed by an outside source. All expense claims will be verified by one or more of the methods listed below:

- Written verification by a doctor, hospital or clinic personnel, dentist, pharmacist, of (a) the anticipated medical costs to be incurred by the family and regular payments due on medical bills; and (b) extent to which those expenses will be reimbursed by insurance or a government agency.
- Written confirmation by the insurance company or employer of health insurance premiums to be paid by the family.
- Written confirmation from the Social Security Administration of Medicare premiums to be paid by the family over the next twelve (12) months. A computer printout will be accepted.
- Copies of payment agreements or most recent invoice that verify payments made on outstanding medical bills that will continue over all or part of the next 12 months.
- Receipts or other record of medical expenses incurred during the past 12 months that can be used to anticipate future medical expenses. HACM may use this approach for "general medical expenses" such as non-prescription drugs and regular visits to doctors or dentists, but not for one-time, nonrecurring expenses from the previous year.



The HACM will use mileage at the IRS rate, or cab, bus fare, or other public transportation cost for verification of the cost of transportation directly related to medical treatment that is expected in the current year.

**For attendant care:**

1. A reliable, knowledgeable professional's certification that the assistance of an attendant is necessary as a medical expense and a projection of the number of hours the care is needed for calculation purposes.
2. Attendant's written confirmation of hours of care provided and amount and frequency of payments received from the family or agency (or copies of canceled checks the family used to make those payments) or stubs from the agency providing the services.

**Attendant Care Expenses**

A reliable, knowledgeable professional's certification that the assistance of an attendant is necessary as a medical expense and a projection of the number of hours the care is needed for calculation purposes. The following items will be accepted:

- Attendant's written confirmation of hours of care provided and amount and frequency of payments received from the family or agency (or copies of canceled checks the family used to make those payments) or stubs from the agency providing the services.
- Receipts, canceled checks, or pay stubs that verify medical costs and insurance expenses likely to be incurred in the next twelve (12) months.
- Copies of payment agreements or most recent invoice that verify payments made on outstanding medical bills that will continue over all or part of the next twelve (12) months.
- Receipts or other records of medical expenses incurred during the past twelve (12) months that can be used to anticipate future medical expenses. The HACM may use this approach for "general medical expenses" such as non-prescription drugs and regular visits to doctors or dentists, but not for a one time nonrecurring expense.

**I. ASSISTANCE TO PERSONS WITH DISABILITIES [24 CFR 5.611]**

In all cases, written certification from a reliable, knowledgeable professional that the person with disabilities requires the services of an attendant and/or the use of auxiliary apparatus to permit them to be employed or to function sufficiently and independently or to enable another family member to be employed.

Family's certification as to whether they receive reimbursement for any of the expenses of disability assistance and the amount of any reimbursement received.

**Attendant Care**

Attendant's written certification of amount received from the family, frequency of receipt, and hours of care provided and written certification from doctor or rehabilitation agency, that the care is necessary to employment of household member.

Certification of family and attendant and/or copies of canceled checks family used to make payments.

**Auxiliary Apparatus**

- Written certification from source of cost and purpose of apparatus. Written certification from doctor or rehabilitation agency that use of apparatus is necessary to employment of

any household member. In case where the disabled person is employed, statement from employer that apparatus is necessary for employment.

- Copies of receipts or evidence of periodic payments for apparatus.

### **Medicare Drug Prescription Benefits Program (Part D)**

The HACM must treat any medical prescription drug discount cards and transitional assistance received by a family as a standard medical deduction so that the family continues to receive a deduction for the full cost of its prescription drugs.

- This means that neither the drug discount nor the transitional assistance should be considered in reimbursement for the purpose of calculating the family's medical expense deduction.
- This also means that the HACM must verify the FULL cost of the family's prescription drugs, not the out-of-pocket cost to the family.

Medicare prescription drug coverage is insurance that covers both brand-name and generic prescription drugs at participating pharmacies. Medicare prescription drug coverage provides protection for people who have very high drug costs. Everyone with Medicare, regardless of income, health status, or prescription drug usage, will have access to prescription drug coverage beginning on January 1, 2006, as follows:

- Low income families with limited assets will qualify, but family must enroll in a plan that meets their prescription drug needs.
- Persons receiving SSI will automatically qualify.
- A one-time \$600 subsidy (transitional assistance) will be provided to eligible Medicare beneficiaries. This subsidy must be excluded as income. The family may provide this verification (if not, the HACM will need to do a third-party verification).
- Un-reimbursed out-of-pocket expenses for prescription drugs must be counted in the family's medical expense deduction.
- Some persons may be required to pay a monthly premium up to \$37 which will be counted as a medical deduction. The family may pay the premium directly or it may be deducted directly from their SSI check.
- Families are not required to report they have enrolled until their next recertification through February, 2007).

## **J. VERIFYING NON-FINANCIAL FACTORS**

### **Verification of Legal Identity**

In order to prevent program abuse, the HACM will require applicants to furnish verification of legal identity for all family members.

One of more of the documents listed below will be considered as acceptable verification of legal identity for adults. If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required. (HACM has the discretion to determine what is needed for verification.):

- Current, valid Driver's license or Department of Motor Vehicles Identification Card
- Certificate of birth, naturalization papers, adoption papers
- Legal Alien Card
- Church issued baptismal certificate

- Current valid driver's license
- U.S. military discharge (DD 214)
- U.S. Passport
- Voter's registration card
- Company/agency identification card
- Court records (marriage, divorce, bankruptcy etc.)
- Hospital records

Documents considered acceptable for the verification of legal identity for minors may be one or more of the following:

- Certificate of birth, Hospital Certificate, Naturalization Papers
- Legal Alien Card
- Adoption papers
- Custody agreement
- Health and Human Services ID (identification card)
- School records
- Church baptismal records

#### **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 recertification/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 recertification/reexamination forms, the HACM will propose termination of tenancy. The HACM will use the following process at initial eligibility and at each recertification 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.

#### **Verification of Marital Status**

Verification of marital status must be verified to determine marital status and relationships.

Verification of a separation may be a copy of court-ordered documentation or other records.

Verification of divorce status will be a certified copy of the divorce decree, signed by a court officer. The following will be considered acceptable verification:

- A certified copy of the marriage certificate or a divorce/dissolution decree, signed by a Court Officer.
- Verification of a separation may be a copy of court-ordered maintenance or other official records.

#### **Familial Relationships**

Certification will normally be considered sufficient verification of family relationships. In

cases where reasonable doubt exists, the family may be asked to provide verification. The following verifications will always be required if applicable:

### **Verification of Relationship**

- Official identification showing names
- Birth certificates
- Baptismal certificates

### **Verification of Guardianship**

- Court-ordered assignment
- Verification from social services agency
- School records
- Affidavit of parent

### **Evidence of an Established Family Relationship**

- Joint bank accounts or other shared financial transactions
- Leases or other evidence of prior cohabitation
- Credit reports showing relationship

### ***Verification from social services agency and/or school records***

### **Verification of Permanent Absence of Family Member**

If an adult member who was formerly a member of the household is reported permanently absent by the family, the HACM will consider any of the following as verification:

1. Husband or wife institutes divorce or legal separation. **Appropriate documentation from the court is required.**
2. Order of protection/restraining order obtained by one family member against another.
3. Proof of another home address, such as utility bills, canceled checks for rent, driver's license, or lease or rental agreement, if available.
4. Statements from other agencies such as social services or a written statement from the landlord or manager that the adult family member is no longer living at that location.
5. If no other proof can be provided, the HACM will accept a self-certification from the family.
6. If the adult family member is incarcerated, a document from the court or correctional facility should be obtained stating how long they will be incarcerated.
7. If no other proof can be provided, the HACM will accept a self-certification from the head of household or the spouse or co-head, if the head is the absent member.

### **Verification of Change in Family Composition**

The HACM may verify changes in family composition (either reported or unreported) through letters, telephone calls, utility records, inspections, landlords, neighbors, credit data, school or **Department of Motor Vehicles (DMV)** records, **law enforcement agencies** and other sources.

When the family notifies the HACM of a family member leaving the assisted household, they must furnish the following information:

- The date the family member moved out and the new address of the family member if available.
- The HACM may require the family to verify that the person is residing at the new address.

### **Verification of Disability**

Verification of disability must be receipt of **Supplemental Security Income (SSI)** or Social Security Administration (SSA) disability payments under Section 2231 of the Social Security Act or 102(87) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(87)) or verified by appropriate diagnostician such as physician, psychiatrist, psychologist, therapist, rehab specialist, or licensed social worker, using the HUD language as the verification format. The HACM has a verification form specifically for this purpose and this form must be used for the verification of disability.

### **Verification for Approval of Live In Aide Attendant**

A Live in Aide will not be approved to reside in the unit if the HUD definition of a live in aide is not met. Also, the HACM will also not approve the addition of the live in aide in the unit in any of the following cases:

1. The live in aide has been on a federal housing program and evicted from public housing or terminated from Housing Choice Voucher Program due to program violation.
2. The live in aide owes any amounts of money to any federal housing program.
3. The live in aide has drug related criminal activity, violent criminal activity, (includes registered sex offenders) as pertains to this administrative plan, or HUD regulations; or the live in aide whose alcohol abuse, or criminal activity hinders the health, safety or peaceful enjoyment of other persons residing in the immediate vicinity of the premises.
4. The live in aide has employment outside of the home.
5. Another person is residing in the unit who is capable of providing the care for participant.
6. Participant requiring live in aide must supply the HACM with verification from a reliable, knowledgeable professional, such as a medical doctor, social worker or case worker. The verification must demonstrate that a live-in aide is necessary and the family would not be equally well served by a home health care service or a care provider who does not live in the unit. This verification will be required to be given to the HACM not only at the initial time the live-in aide begins to reside in the subsidized unit but also at every annual re-certification thereafter.
7. No other additional family members of live in care attendant may reside in unit with participant.

In instances where the family receives payments from Human Services through the In Home Supportive Services (IHSS) program, the live-in aide reported to the HACM must be the same person on record with IHSS.

The HACM may deem it necessary to re-verify the necessity of a live-in aide at any time. The family will be required to submit verification at every annual recertification.

The live-in aide's qualification for housing occupancy terminates when the individual needing the supportive services leaves the unit or fails to qualify for continued occupancy. The live-in aide does not qualify for continued occupancy or where the need for live-in aide's assistance ceases as a remaining member of the tenant family, even if they are related by blood, marriage or operation of

law.

**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 United States 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 HACM hearing is pending.

- (a) Citizens or nationals of the United States are required to sign a declaration under penalty of perjury. The HACM will require **verification** **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 HACM
- (b) Eligible immigrants, **who were Participants and 62 or over on June 19, 1995, are 62 years of age or over,** are required to sign a declaration of eligible immigration status and provide proof of age.
- (c) 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 HACM verifies the status through the **INS SAVE USCIS** system. If this primary verification fails to verify status, the HACM must request within ten **(10)** days that the **INS USCIS** conduct a manual search.
- (d) 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.
- (e) 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**

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 HACM 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 recertification after the new member moves in.

Once verification has been completed for any covered program, it need not be repeated except that, in the case of port-in families, if the initial HACM does not supply the documents, the HACM must conduct the determination.

**Extensions of Time to Provide Documents**

The HACM 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-5451)
- Resident Alien 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 **USCIS INS** for issuance of replacement of any of the above documents that show the 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 (5) years.

The HACM will verify the eligibility of a family member at any time such eligibility is in question, without regard to their position of the family on the waiting list.

If the HACM 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 pro-rating the family's assistance.

**Verification of Social Security Numbers [24 CFR 5.216]****Disclosure Requirements**

Social security numbers must be provided as a condition of eligibility for all family members age six and over if they have been issued a number. Verification of Social Security numbers will be done through a Social Security Card issued by the Social Security Administration.

If a family member cannot produce a Social Security Card, only the documents listed below showing his or her Social Security Number may be used for verification. The family is also required to certify in writing that the document(s) submitted in lieu of the Social Security Card information provided is/are complete and accurate:

- A driver's license
- Identification card issued by a Federal, State or local agency
- Identification card issued by a medical insurance company or provider (including Medicare and Medicaid)
- An identification card issued by an employer or trade union
- Earnings statements or payroll stubs
- Bank Statements
- IRS Form 1099
- Benefit award letters from government agencies
- Retirement benefit letter
- Life Insurance policies
- Court records such as real estate, tax notices, marriage and divorce, judgment or bankruptcy records
- Verification of benefits or Social Security Number from Social Security Administration

New family members ages six and older will be required to produce their Social Security Card. This information is to be provided at the time the change in family composition is reported to the HACM.

If an applicant or participant is able to disclose the Social Security Number but cannot meet the documentation requirements, the applicant or participant must sign a certification to that effect provided by the HACM. The applicant/participant or family member will have an additional 60 days to provide proof of the Social Security Number. If they fail to provide this documentation, the family's assistance will be terminated.

In the case of an individual at least 62 years of age, the HACM may grant an extension for an additional 60 days to a total of 120 days. If, at the end of this time, the elderly individual has not provided documentation, the family's assistance will be terminated or participation will be denied.

Disclosure of Social Security Numbers (SSN) is required. The requirements of this section apply to applicants and participants. Each applicant and participant must submit a 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 Social Security number;
- Previously disclosed a Social Security number that HUD or the Social Security Administration (SSA) determined was invalid; or
- Been issued a new Social Security number.



Once a participant has disclosed and the HACM has verified each SSN, the following rules apply:

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

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

The HACM shall grant an extension of one 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.

The mandatory social security number requirements do 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.

#### Termination of assistance or termination of participants

The HA must terminate the assistance or tenancy or both of a participant, if the participant does not meet the applicable SSN disclosure, documentation and verification requirements.

#### Submission of evidence of citizenship or eligible immigration status (continues to be the same):

- For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. national. The HACM must obtain verification of the declaration by requiring presentation of a U.S. Passport, U.S. birth certificate, Employment Authorization card, Temporary Resident card or other appropriate documentation outlined in section 214.
- For non-citizens, adequate evidence of a signed declaration or eligible immigration status on the Section 214 document.

HUD makes it clear that the above requirements are not intended to 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, or authorize their eviction or denial of admission on the basis of the new requirements pertaining to obtaining social security numbers.

### **Medical Need for Larger Unit**

A written certification that a larger unit is necessary must be obtained from a reliable, knowledgeable professional. If the family member gets written certification that the need for the larger unit is based on a permanent disability, this certification will only need to be obtained once. If the certification does not indicate how long the larger unit is necessary, the medical need will be verified annually at the recertification as part of the reasonable accommodation.

When a victim of domestic violence requests special consideration, (e.g. to transfer to another unit during the first year of tenancy, or to refrain from being terminated from the HCV program due to being evicted from a unit as a result of being a victim of a domestic violence act), the HACM will require that the individual certify via a HUD-approved certification form that s/he is a victim of domestic violence, dating violence, or stalking, and that the incident/s in question are bona fide incidents of the actual or threatened abuse: as well as to provide any documentation required by the HACM or victims self-certification.

### **K. VERIFICATION OF WAITING LIST PREFERENCES [24 CFR 982.207] Local Preferences as determined by the HACM**

#### **VERIFICATION OF WAITING LIST PREFERENCES [24 CFR 982.207]**

**Independent Living Skills Program:** Foster youth/young adults transitioning from foster care and who are at risk for homeless and who are referred by partnering agency where MOU is in place.

**Involuntarily Displaced:** written verification must be made by local, state or federal agency verifying declared disaster.

**Veteran Preference:** The HACM will require US Government documents, which indicate that the applicant qualifies under the following definition: a veteran is any person who served in the United States military or served 6 years as a reservist or national guardsman (not including the two years of standby).

If the spouse is applying for a veteran status, verification will be required of marital status to the veteran. If the veteran is deceased, the spouse cannot have remarried.

**Residency Preference:** verification that person currently lives, works or has been hired to work within the HACM's area of jurisdiction.

**Disabled or Elderly Preference:** verification of birth or Social Security or Supplemental Security benefits; verification of Social Security disability benefits or completion of HACM's disability verification form.

**Set Aside Preference:** written verification must be provided by partnering homeless service organization who are a part of the Merced County Continuum of Care and have signed agreement with the HACM.

#### **Verification of a Local Preference**

Documents will be accepted, as applicable, as proof of residency and veteran/active serviceperson status. Other situations that qualify a family for a local preference must be

certified by a third- party.

### **Federally Declared Disaster Areas**

Families who were receiving Housing Choice Voucher assistance will take precedence over other waiting list place holders. New applicants to the Housing Choice Voucher program must be a family displaced by a natural disaster, including disasters recognized by the Federal government, which extensively damaged or destroyed their dwelling.

### **Involuntary Displacement**

Families who claim they are being or have been displaced due to either a disaster or government action:

- Family to provide written verification by the displacing agency, or by a service agency such as the Red Cross.

Families who claim they have been or are about to be displaced to avoid reprisals for providing information to assist police in a criminal investigation:

- Certification of threat assessment by a law enforcement agency.
- Oral or written recommendation from law enforcement agency or HUD. Displacement

by inaccessibility of unit:

- A statement from the owner of the critical elements that are inaccessible, and that the owner is not going to make the needed modifications, or permit the family to make the modifications.
- An inspection by the HACM to verify inaccessibility of critical elements.
- Statement from the owner of the building that the accommodations required will not be made.
- If the owner permits the tenant to make the modifications, verification that the family cannot afford the expense.

Displacement by HUD disposition of a project:

- Written verification from HUD.

Determination of Standard Replacement Housing:

- Inspection by a HACM inspector and/or certification by landlord.

### **Residency Preference**

For families who live, work or have been hired to work in the jurisdiction of the HACM. In order to verify that an applicant is a resident, the HACM will require a minimum of three (3) of the following documents: rent receipts, leases, utility bills, employer or agency records, school records, driver's license, voter's registration records or credit reports. For families who have been hired to work in jurisdiction of the HACM, a statement from the employer will be required.

**Veterans Preference**

This preference is available to current members of the U.S. Military Armed Forces, veterans, or surviving spouses of veterans. The HACM will require U.S. government documents which indicate that the applicant qualifies under the above definition.

**Disability Preference**

This preference is available for families with a member who has a disability as defined in this Administrative Plan. The HACM will require appropriate documentation from a knowledgeable professional.

The HACM will not inquire as to the nature of the disability except as to verify necessity for accessible unit. An award letter or other proof of eligibility for Social Security disability or SSI will be acceptable.

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## Chapter 8

### VOUCHER ISSUANCE AND BRIEFINGS

[24 CFR 982.301, 982.302, 982.303; 982.313, 982.315, 982.316, 982.54]

#### INTRODUCTION

The HACM's goals and objectives are designed to assure that families selected to participate are equipped with the tools necessary to locate an acceptable housing unit. Families are provided sufficient knowledge and information regarding the program and how to achieve maximum benefit while complying with program requirements. When eligibility has been determined, the HACM will conduct a mandatory briefing to ensure that families know how the program works. The briefing will provide a broad description of owner and family responsibilities, HACM procedures, and how to lease a unit. The family will also receive a briefing packet which provides more detailed information about the program including the benefits of moving outside areas of poverty and minority concentration. This chapter describes how briefings will be conducted, the information that will be provided to families, and the policies for how changes in the family composition will be handled.

#### A. **ISSUANCE OF VOUCHERS [24 CFR 982.204(d), 982.54(d) (2)]**

When funding is available, the HACM will issue vouchers to applicants whose eligibility has been determined. The issuance of Vouchers must be within the dollar limitations set by the ACC budget.

The number of vouchers issued must ensure that the HACM stays as close as possible to 100 percent (100%) lease-up. The HACM performs a monthly calculation electronically to determine whether vouchers can be processed issued and to what extent the HACM can over-issue (issue more Vouchers than the budget allows).

The HACM may over-issue Vouchers only to the extent necessary to meet leasing goals. ~~All Vouchers, which are over issued, must be honored. If the HACM finds it is over leased, it must adjust future issuance of Vouchers in order not to exceed the ACC budget limitations over the fiscal year.~~

#### B. **BRIEFING TYPES AND REQUIRED ATTENDANCE [24 CFR 982.301] Initial Applicant Briefing**

A full HUD required oral briefing will be conducted for applicant families who are determined to be eligible for assistance. The briefings will be conducted in ~~large groups, smaller~~ groups and individual meetings. Families who attend group briefings and still have the need for individual assistance will be referred to their selected Eligibility Specialist. **Briefings will be conducted in English.**

Portable families coming into Merced County's jurisdiction, whether absorbed or not by HACM, will be required to attend the scheduled voucher briefing.

*The purpose of the briefing is to explain how the program works and the documents in the Voucher holder's packet to families so that they are fully informed about the program. This will enable them to utilize the program to their advantage, and it will prepare them to discuss the program with potential owners and property managers.*

The HACM will not issue a Voucher to a family unless the household representative has attended a briefing and signed the Voucher. Applicants who provide prior notice of inability to attend a briefing, and the HACM staff confirms that it is a valid reason, will be **automatically** scheduled for the next briefing. Applicants who fail to attend the first scheduled briefing, without prior notification and approval of the HACM, may be denied admission. The HACM will conduct individual briefings for families with disabilities at their home, upon request by the family, if required for reasonable accommodation.

If the family includes a person with disabilities, the HACM will ensure compliance with 24 CFR 8.6 to ensure effective communication.

When the HACM selects a family to participate in a tenant-based program, the HACM must give the family an oral briefing. The briefing must include information on the following subjects:

1. A description of how the program works;
2. Family and owner responsibilities; and
3. Where the family may lease a unit, including renting a dwelling unit inside or outside the HACM jurisdiction, and any information on selecting a unit that HUD provides.

**Briefing Packet [24 CFR 982.301(b)]**

The documents and information provided in the briefing packet for the voucher program will comply with all HUD requirements. The HACM also includes other information and/or materials which are not required by HUD.

The family is provided with the following information and materials:

1. A completed HUD Voucher, showing the term of the voucher, and the HACM policy for requesting extensions to the term of the voucher (**referred to as "tolling"**) or suspensions of the voucher.
2. A description of the method used to calculate the housing assistance payment for the family, including how the HACM determines the payment standard for a family; how the HACM determines total tenant payment for a family and information on the payment standard and utility allowance schedule.
3. How the maximum allowable rent is determined.
4. The boundaries of the geographical area in which the family may lease a unit including an explanation of portability.
5. The HUD required tenancy addendum, which must be included in the lease.
6. The Request for Tenancy Approval form, and a description of the procedure for requesting approval for a unit.
7. HACM privacy notice on providing information about families to prospective owners.
8. The Subsidy Standards, when and how exceptions are made.
9. The HUD brochure, "A Good Place to Live" on how to select a unit that complies with HQS.
10. The HUD brochure on lead-based paint, including form for Disclosure of Lead Based Paint to be signed by owner and Housing Choice Voucher participant.
11. Information on federal, State and local equal opportunity laws including the pamphlet "Fair Housing: It's Your Right" and other information about fair housing laws and guidelines; the form for reporting suspected discrimination; and the phone number of the local fair housing agency.  
A unit listing of landlords interested to lease to assisted families or help in the search and known units available for the voucher issued. The list includes landlords or other parties who

- are willing to lease units or help families find units outside areas of poverty or minority concentration.
12. Available accessible units known to the HACM will be identified on the unit listing form.
  13. The Family Obligations and Owner responsibilities under the program.
  14. Informational Sheet on Reporting Changes in Family Income/Composition and Policy on Missed Appointments
  15. The grounds on which the HACM may terminate assistance for a participant family because of family action or failure to act.
  16. Sample of a HUD contract.
  17. Any supplemental material the Housing Choice Voucher Department may deem necessary, such as:
    - HUD Inspection Form/Initial
  18. Information packet including an explanation of how portability works, including a list of neighboring housing agencies with the name, address and telephone number of a portability contact person at each for use by families who may move under portability.
  19. Expanding Housing Opportunities, includes:
    - Maps of Poverty and Minority Areas (Low Poverty and Low Minority Areas), as well as Housing Choice Voucher Impacted Areas
    - Information includes schools, employment and any outreach programs.
    - Bus routes
  20. HUD Form 903.1 – “Are You a Victim of Housing Discrimination?”
  21. Intent to Vacate Notice
  22. HACM Informal Hearing procedures including when the HACM is required to offer an applicant or participant family the opportunity for an informal hearing, and how to request the hearing.
  23. Family Self-Sufficiency Brochure
  24. HACM’s sample lease for owners who do not use their own lease for their tenants.

**Other Information to be Provided at the Briefing [24 CFR 982.301(a)]**

*The person conducting the briefing will also describe how the program works and the relationship between the family and the owner, the family and the HACM, and the HACM and the owner.*

The briefing presentation emphasizes:

- Family and owner responsibilities
- Where a family may lease a unit inside and outside its jurisdiction
- How portability works for families eligible to exercise portability
- Advantages to moving to area with low concentration of poor families if family is living in a high poverty census tract in the HACM’s jurisdiction
- Choosing a unit carefully and only after due consideration.
- Procedures for notifying the HACM of program abuses such as side payments, extra charges, violations of tenant rights, and owner failure to repair.
- The family’s rights as a tenant and a program participant
- Requirements for reporting changes between annual recertifications.
- Advantages of Family Self-Sufficiency Program

**Transfer/Moves**

Participants who wish to move from one unit to another, will be given a move out packet at the time they submit their Intent to Vacate Notice that is signed by Owner/Agent and tenant. Family will be issued a new voucher to begin their housing search and will not be required to attend a briefing.

**Move Briefing**

Appropriate information will be provided to participants who will be reissued a voucher to move, and who have been recertified within the last one hundred twenty (120) days, and have given notice of intent to vacate to their landlord. This briefing may include incoming portable families.

**Owner Briefings**

Briefings will be held periodically for all owners. Current owners are notified by mail and prospective owners verbally informed via the phone. The purpose of the briefing is to assure successful owner participation in the program and to review Federal regulations and HACM policies and procedures. It includes the responsibilities and roles of all three parties.

**Owner Briefing**

Briefings are held for owners as needed. Prospective owners are also welcome at the tenant briefing. The purpose of the briefing is to assure successful owner participation in the program. The briefing covers the responsibilities and roles of the three parties.

**C. ENCOURAGING PARTICIPATION IN AREAS WITHOUT LOW INCOME OR MINORITY CONCENTRATION**

At the briefing, families are encouraged to search for housing in non-impacted areas and the HACM will provide assistance to families who wish to do so.

The HACM has areas of poverty and minority concentration clearly delineated in order to provide families with information and encouragement in seeking housing opportunities outside highly concentrated areas.

The HACM will investigate and analyze when voucher holders are experiencing difficulties locating or obtaining housing units outside areas of concentration.

The assistance provided to such families includes:

- Providing families with a search record form to gather and record information
- Direct contact with landlords
- Counseling with the family
- Providing information about services in various non-impacted areas
- Formal or informal discussions with landlord groups
- Formal or informal discussions with social service agencies
- Meeting with rental referral companies or agencies
- Meeting with Fair Housing groups or agencies



**D. ASSISTANCE TO FAMILIES WHO CLAIM DISCRIMINATION**

If staff receives a Fair Housing complaint, it will be referred immediately to Management pursuant to the Fair Housing Complaint Investigation Policy of the HACM (refer to Chapter 1).

Any Fair Housing complaints will be fully investigated and reviewed by HACM pursuant to said policy.

The HACM will then take whatever appropriate action is necessary.

**E. SECURITY DEPOSIT REQUIREMENTS [24 CFR 982.313]**

The owner is not required to but may collect a security deposit from the tenant.

Security deposits charged by owners may not exceed those charged to unassisted tenants (or the maximum prescribed by State or local law.)

For families leasing in place, the responsibility for first and last month's rent is not considered a security deposit issue. In these cases, the owner should settle the issue with the tenant prior to the beginning of assistance.

**F. TERM OF VOUCHER [24 CFR 982.303]**

During the briefing session, each household will be issued a voucher which represents a contractual agreement between the HACM and the family specifying the rights and responsibilities of each party. It does not constitute admission to the program which occurs when the lease and contract become effective. **The voucher is valid for a period of at least sixty (60) calendar days from the date of issuance. The family must submit the Request for Tenancy Approval (RTA) and a Lease/Rental Agreement within the sixty (60) day period unless an extension has been granted by the HACM.**

**Extensions**

~~Any requests for an extension of the voucher time period must be made prior to the expiration date of the voucher. Extensions may be granted with supervisory approval at the discretion of the HACM, primarily for, but not exclusive of, any of the following reasons:~~

- ~~• It is necessary as a reasonable accommodation for a person with disabilities;~~
- ~~• Extenuating circumstances such as illness, hospitalization or a family emergency, which affected the family's ability to find a unit within the voucher time period;~~
- ~~• Family can show evidence, through a completed search record, that they were unable to locate a unit;~~
- ~~• Family has submitted Request(s) for Tenancy Approval that the HACM has disapproved (i.e., HACM unable to negotiate rent(s) with owner or unit(s) do not meet HQS);~~
- ~~• Family size or other special requirements made finding a unit difficult.~~

~~The HACM will request proof to substantiate the need for an extension.~~

~~The family may request one or more extensions.~~

**The HACM may extend the voucher in one or more increments. Unless approved by the Director of Housing Programs or their designee, no more than two (2) thirty (30) days or less will be granted**

and never for a total of more than one hundred twenty (120) days. If as a reasonable accommodation, the family needs an extension in excess of one hundred twenty (120) days, the HACM will review such request on a case by case basis.

A family must submit a written request for an extension of the voucher time period. All requests for extensions must be received prior to the expiration date of the voucher. Extensions are permissible at the discretion of the HACM up to a maximum of an additional sixty (60) days primarily for these reasons:

- Extenuating circumstances such as hospitalization or a family emergency for an extended period of time which has affected the family's ability to find a unit within the initial sixty (60) day period (verification may be required).
- The HACM is satisfied that the family has made a reasonable effort to locate a unit, including seeking the assistance of the HACM, throughout the initial sixty (60) day period. A completed search record may be required.
- The family was prevented from finding a unit due to disability accessibility requirements or a large size five (5) bedroom unit requirement. The search record may be required as verification.

### **Expirations**

The Voucher is valid for a period of 60 calendar days from the date of issuance. The family must submit a Request for Tenancy Approval within the 60-day period unless a request for a reasonable accommodation has been granted by the HACM.

If the Voucher has expired, **and has not been extended by the HACM or expires after an extension**, the family will be denied assistance. The family will not be entitled to a review or hearing. The family will need to reapply to the program.

If the family is currently assisted, they may remain as a participant in their unit if there is an assisted lease/contract in effect before the 60-day period has expired.

### **Tolling Days**

The voucher term will be suspended (the clock on the family's voucher is stopped) from the date a Request for Tenancy Approval is received until the HACM approves or denies the request. The HACM may grant a family a suspension of the voucher term if the family has submitted a request for approval of the tenancy during the term of the voucher. The family is entitled to any remaining time from suspension date to the voucher expiration date.

### **Assistance to Voucher Holders**

Families who require additional assistance during their search may contact the HACM office to request assistance. Voucher holders will be notified at their briefing session that they may access updated listings of available units by visiting our office or the agency website at: [www.merced-pha.com](http://www.merced-pha.com).

The HACM will assist families with negotiations with owners and provide other assistance related to the families' search for housing.

After the first sixty (60) days of the search, the HACM may require the family to provide a search record.

## G. FAMILY BREAKUP AND REMAINING MEMBER OF TENANT FAMILY

### **Family Breakup (24CFR 982.315)**

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

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the HACM must ensure that the victim retains assistance.
- If a court determines the disposition of property between the members of an assisted family members continue to receive assistance.

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

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

In the absence of a judicial decision or an agreement among the original family members, the HACM will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the HACM will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; (5) the recommendations of social service professionals; and (6) given to the adult member who initially applied, if another adult member was added at a later time.

*Note: If an adult member requests residual rights to the Voucher (head of household requests that other adult member receive the Voucher), the adult member who wishes to receive the Voucher, must have been an approved member of the household by the HACM for at least 6 months.*

The HACM shall require verification of the above circumstances. If either or both of the families do not provide the documentation requested by the HACM, termination of the Voucher for failure to supply requested verifications will occur.

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

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

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

*A reduction in family size may require a reduction in the voucher family unit size.*

**F. VOUCHER ISSUANCE DETERMINATION FOR SPLIT HOUSEHOLDS [24 CFR 982.315]**

In those instances when a family assisted under the Housing Choice Voucher program becomes divided into two otherwise eligible families due to divorce, legal separation, or the division of the family, and the new families cannot agree as to which new family unit should continue to receive the assistance, and there is no determination by a court, the Director of Rental Assistance or his or her designee shall consider the following factors to determine which of the families will continue to be assisted:

- Which of the two new family units has custody of the dependent children.
- Which family member was the head of household when the voucher was initially issued. (listed on the initial application)
- The composition of the new family units, and which unit contains elderly or disabled members.
- Whether domestic violence was involved in the breakup.
- Which of the family members remain in the original assisted unit.

If a court determines the disposition of property between members of the assisted family in a divorce or separation under a settlement or judicial decree, the HACM is bound by the court's determination of which family members continue to receive assistance in the program.

Documentation of these factors will be the responsibility of the requesting parties. If documentation is not provided, the HACM will terminate assistance on the basis of failure to provide information necessary for a recertification.

**G. REMAINING MEMBER OF TENANT FAMILY – RETENTION OF VOUCHER [24 CFR 982.315]**

To be considered the remaining member of the tenant family, the person must have been previously approved by the HACM to be living in the unit.

A live-in attendant, by definition, is not a member of the family and will not be considered a remaining member of the family.

In order for a minor child to continue to receive assistance as a remaining family member:

- The court has to have awarded emancipated minor status to the minor.
  - The HACM has to have verified that social services and/or the Juvenile Court has arranged for another adult to be brought into the assisted unit to care for the children for an indefinite period.
- A reduction in family size may require a reduction in the voucher family unit size.

**Chapter 9****REQUEST FOR APPROVAL OF TENANCY AND CONTRACT EXECUTION [24  
CFR 982.302]****INTRODUCTION [24 CFR 982.305(a)]**

The HACM's program operations are designed to utilize available resources in a manner that is efficient and provides eligible families timely assistance based on the number of units that have been budgeted. The HACM's objectives include maximizing HUD funds by providing assistance to as many eligible families and for as many eligible units as the budget will allow.

After families are issued a voucher, they may search for a unit anywhere within the jurisdiction of the HACM.

- Families will be permitted to move outside of the HACM's jurisdiction under portability procedures after the first year of the lease (first year of admission to the Housing Choice Voucher Program).

The family must find an eligible unit under the program rules, with an owner/landlord who is willing to enter into a Housing Assistance Payment (HAP) Contract with the HACM. This chapter defines the types of eligible housing, the HACM's policies which pertain to initial inspections, lease requirements, owner disapproval, and the processing of the Request for Tenancy Approval (RFTA).

**A. REQUEST FOR TENANCY APPROVAL [24 CFR 982.302, 982.305(b)]**

The Request for Tenancy Approval (RFTA) and a copy of the proposed Lease must be submitted by the family during the term of the voucher.

The Request for Tenancy Approval must be signed by both the owner and Voucher holder.

- The HACM will not permit the family to submit more than one RFTA at a time.
- The HACM will not permit the family to “back-out” out of the submitted RFTA. The HACM will review the proposed lease and the RFTA documents to determine whether or not they are approvable.

The Request will be approved if:

1. The unit is an eligible type of housing
2. The unit meets HUD's Housing Quality Standards (and any additional criteria as identified in this Administrative Plan)
3. The rent is reasonable and approvable (See Section G).
4. The Security Deposit is approvable in accordance with any limitations in this plan.
5. The proposed lease complies with HUD and HACM requirements (See Section C).

The owner is approvable, and there are no conflicts of interest (See Chapter 16).

On initial or moves, the family share of rent does not exceed 40 percent of the family's adjusted income. (40% rule only applies to family's renting a unit where the gross rent is more than their payment standard for their voucher size.

The owner of the property is NOT related to the Housing Choice Voucher family as a parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the HACM determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities. The owner of the property CANNOT TRANSFER OWNERSHIP or property, such as, husband to wife, or vice versa, in order to meet this requirement.

Under Federal Regulations “owner” includes a principal or otherwise interested party.

6. The family continues to be eligible for the program.
7. At the time a family initially receives assistance in a unit (new admissions and moves), if the gross rent for the unit exceeds the applicable payment standard for the family, the family share of rent may not exceed 40 percent of the family monthly adjusted income.

**A. TERM OF ASSISTED TENANCY [24 CFR 982.309]**

The Request for Tenancy Approval (RFTA) and a copy of the proposed lease, including the HUD prescribed tenancy addendum, must be submitted by the family during the term of the voucher.

The family must submit the RFTA in the form and manner required by the HACM.

The RFTA must be signed by both the owner and voucher holder. The HACM will not permit the family to submit more than one RFTA at a time. The HACM will review the proposed lease and the RTA documents to determine whether or not they are approvable. The request will be approved if:

- The unit is an eligible type of housing

- The unit meets HUD’s Housing Quality Standards (and any additional criteria as identified in this Administrative Plan)
- The rent is reasonable and approvable
- The security deposit is approvable in accordance with State or local law
- The proposed lease complies with HUD and HACM requirements (see “Section D” of this chapter)
- The owner is approvable, and there are no conflicts of interest (see this Administrative Plan)

In addition to the above, at the time a family initially receives assistance (new admissions and moves), if the gross rent for the unit exceeds the applicable payment standard for the family, the family share of rent may not exceed forty percent (40%) of the family monthly adjusted income (see this Administrative Plan).

#### **Disapproval of Request for Tenancy Approval (RFTA)**

If the HACM determines that the Request cannot be approved for any reason, the landlord and the family will be notified. The HACM will instruct the owner and family of the steps that are necessary to approve the Request.

The owner will be given a maximum of 30 calendar days to submit an approvable RFTA from the date of disapproval.

When an RFTA is not approved, the HACM will furnish another RFTA form to the family so that the family can continue to search for eligible housing, as long as the family is still eligible for the Housing Choice Voucher Program. ~~(Suspension (tolling) given for time previous RFTA was in effect.~~ The time limit on the Voucher will be suspended while the RFTA is being processed.

#### **B. ELIGIBLE TYPES OF SPECIAL HOUSING [24 CFR 982.353-2]**

The HACM will only approve the following special housing types. All other special housing types are ineligible.

- Manufactured home rented by family (with the space on which the home is located). (Excluded are manufactured homes owned by the family who leases a manufactured home space or who do not lease a space.)
- Shared Housing

A family can own a rental unit but cannot reside in it while being assisted.

The HACM may not permit a Voucher holder to lease a unit which is receiving Project-Based Housing Choice Voucher assistance or any duplicative rental subsidies, or any other housing prohibited by HUD.

The HACM will approve any of the following types of housing in the voucher program:

- All structure types can be utilized.
- Manufactured homes where the tenant leases the mobile home and the pad.
- Manufactured homes where the tenant owns the mobile home and leases the pad.
- Units owned (but not subsidized) by the HACM (following HUD prescribed requirements).

- Shared housing units that meets Housing Quality Standards.
- Assisted Living Units.

The HACM will not approve:

- A unit occupied by the owner or by any person with an interest in the unit, other than manufactured homes as described above.
- The owner of a shared housing unit may reside in the unit. A resident owner may enter into a Housing Assistance Payment (HAP) Contract with the HACM. However, housing assistance may not be paid on behalf of an owner. An assisted person may not be related by blood or marriage to a resident owner.
- Nursing homes or other institutions that provide care.
- School dormitories and institutional housing.
- Any other type of housing prohibited by HUD.

**C. RESTRICTION ON RENTING FROM RELATIVES [24 CFR 982.306 (d)]**

Effective June 17, 1998, the Department of Housing and Urban Development (HUD) has limited the circumstances under which landlords can lease a unit to relatives under the Housing Choice Voucher program. This policy applies to new admissions and to transfers. The HACM will not approve a unit if the landlord is related to any of the tenant's family members in one of the following ways:

- Parent
- Child
- Grandparent
- Grandchild
- Sister
- Brother

The Housing may approve a unit where the owner and the tenant are related if it determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

The HACM will not approve shared housing assistance for a family if the owner resides in the unit and is related by blood and/or marriage to the assisted family. Although other regulations permit the leasing of a rental unit from certain relatives when needed as a reasonable accommodation, the U.S. Department of Housing and Urban Development (HUD) has not established a similarly regulatory provision for shared housing.

**D. LEASE REVIEW [24 CFR 982.308]**

The HACM will not review the lease, ~~except to assure that the utilities and appliances are to be supplied by the owner or tenant are specified in the lease and that the initial lease term of the lease included~~ particularly noting the approvability of optional charges and compliance with regulations and State and local law. The tenant also must have legal capacity to enter a lease under State and local law. Responsibility for utilities, appliances and optional services must correspond to those provided on the RTA.

The family and owner must submit a standard form lease used in the locality by the owner and that is generally used for other unassisted tenants in the premises. The terms and conditions of the lease



must be consistent with State and local law. The lease must specify ~~What utilities and appliances are to be supplied by the family. The HUD prescribed tenancy addendum must be included in the lease word for word before the lease is executed.~~ :

- The names of the owner and tenant, and
- The address of the unit rented (including apartment number, if any), and
- The amount of the monthly rent to owner, and
- The utilities and appliances to be supplied by the owner and
- The utilities and appliances to be supplied by the family
- **The HUD prescribed tenancy addendum must be included in the lease word-for-word before the lease is executed**

House rules of the owner may be attached to the lease as an addendum, provided they are approved by the HACM to ensure they do not violate any fair housing provisions and do not conflict with the tenancy addendum.

If the owner does not have a standard form lease or wishes to use the HACM's standard lease, they may do so.

~~The HUD prescribed tenancy addendum must be included in the lease word for word before the lease is executed.~~

Effective September 15, 2000, the owner's lease must include the Lead Warning Statement and disclosure information required by 24 CFR 35.92(b).

**The lease must provide that drug-related criminal activity engaged in by the tenant, any household member, or any guest on or near the premises, or any person under the tenant's control on the premises is grounds to terminate tenancy.**

**The lease must also provide that the owner may evict the family when the owner determines that:**

- **Any household member is illegally using a drug; or**
- **A pattern of illegal use of drug by any household member interferes with the health, safety or right to peaceful enjoyment of the premises by other residents.**

### **Actions before Lease Term**

All of the following must always be completed before the beginning of the initial term of the contract for a unit:

- The HACM has inspected the unit and has determined that the unit satisfies Housing Quality Standards (HQS)
- The HACM has determined that the rent charged by the owner is reasonable
- The landlord and the tenant have executed the lease, including the HUD prescribed tenancy addendum
- The HACM has approved leasing of the unit in accordance with program requirements when the gross rent exceeds the applicable payment standard for the family, the HACM must determine that the family share (total family contribution) will not be more than forty percent (40%) of the family's monthly adjusted income.

Note: effective February 1, 2005, the initial term of the lease will be 12 months. If owner elects to use own lease, the initial term of the lease must be for 12 months.

### **Term of the Assisted Tenancy**

The initial term of the lease must be for at least one year. The HACM may approve a shorter initial term if the HACM determines that:

- The shorter term would improve housing opportunities for the tenant
- The shorter term is the prevailing local market practice

During the initial term of the lease, the owner may not raise the rent to owner.

### **E. SEPARATE AGREEMENTS**

Separate agreements are not necessarily illegal side agreements. Families and owners will be advised of the prohibition of illegal side payments for additional rent, or for items normally included in the rent of unassisted families, or for items not shown on the approved lease.

The family is not liable under the lease for unpaid charges for items covered by separate agreements and nonpayment of these agreements cannot be cause for eviction.

Owners and families may execute separate agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease if the agreement is in writing and approved by the HACM.

Any appliances, services or other items which are routinely provided to unassisted families as part of the lease (such as air conditioning, dishwasher or garage) or are permanently installed in the unit, cannot be put under separate agreement and must be included in the lease. For there to be a separate agreement, the family must have the option of not utilizing the service, appliance or other item.

If the family and owner have come to a written agreement on the amount of allowable charges for a specific item, so long as those charges are reasonable and not a substitute for higher rent, they will be allowed.

All agreements for special items or services must be attached to the lease approved by the HACM. If agreements are entered into at a later date, they must be approved by the HACM and attached to the lease.

The HACM will not approve separate agreements for modifications to the unit for persons with disabilities. The modifications are usually within the dwelling and are critical to the use of the dwelling.

### **F. INITIAL INSPECTIONS [24 CFR 982.305(a) & (b)]**

See Chapter 10, "Housing Quality Standards and Inspections" in this Administrative Plan.

### **G. RENT LIMITATIONS**

The HACM will make a determination as to the reasonableness of the proposed rent in relation to comparable units available for lease on the private unassisted market, and the rent charged by the owner for a comparable unassisted unit in the building or premises.

- The HACM will disapprove the unit if the tenant's portion of rent plus the utility allowance or total family contribution (TFC) exceeds 40% of monthly-adjusted income, and the gross rent of the unit is larger than the payment standard for the family's voucher size.

By accepting each monthly housing assistance payment from the HACM, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner is required to provide the HACM with information requested on rents charged by the owner on the premises or elsewhere.

At all times during the tenancy, the rent to owner may not be more than the most current reasonable rent as determined and approved by the HACM.

**H. DISAPPROVAL OF PROPOSED RENT [24 CFR 982.502] PROPOSED RENT [24 CFR 982.502]**

In any of the programs, if the proposed **Gross Rent contract rent** is not reasonable, at the family's request, the HACM will negotiate with the owner to reduce the rent to a reasonable rent.

If the rent is not affordable because the family share would be more than 40% of the family's monthly-adjusted income, the HACM will negotiate with the owner to reduce the rent to an affordable rent for the family.

At the family's request, the HACM will negotiate with the owner to reduce the rent or include some or all of the utilities in the rent to owner.

If the rent can be approved after negotiations with the owner, the HACM will continue processing the Request for Tenancy Approval and Lease. If the revised rent involves a change in the provision of utilities, the Request for Tenancy Approval must be initiated by the owner where the change of utilities has occurred.

If the owner does not agree on the Rent to Owner after the HACM has tried and failed to negotiate a revised rent, the HACM will inform the family and owner that the **lease RFTA** is disapproved.

**If the owner does not agree on the rent to owner after the HACM has tried and failed to negotiate a revised rent, the HACM will inform the family and owner that the RTA is disapproved.**

**I. INFORMATION TO OWNERS [24 CFR 982.307(b), 982.54(d)(7)]**

In accordance with HUD requirements, the HACM must furnish prospective owners with the family's current and prior address as shown in the HACM's records and, if known to the HACM, the name and address of the landlord at the family's current and prior address.

The HACM will make an exception to this requirement if the family's whereabouts must be protected due to domestic abuse or witness protection.

The HACM will inform owners that it is the responsibility of the landlord to determine the suitability of prospective tenants. Owners will be encouraged to screen applicants for rent payment history, payment of utility bills, eviction history, respecting the rights of other residents, damage to units, drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

A statement of the HACM's policy on release of information to prospective landlords will be included in the briefing packet which is provided to the family.

- The HACM will not provide documented information regarding tenancy history, except the HACM will provide the following information based on documentation in its possession: family composition, past annual inspections and rating of past housekeeping.

The information will be provided for the last 12 months only, and may be provided orally.

The HACM's policy on providing information to owners will apply uniformly to all families and owners.

The HACM will provide documented information regarding tenancy history for the past two (2) years to prospective landlords, upon written request from the landlord (if such information is available to the HACM).

The information will be provided in writing.

Only designated staff may provide this information. The HACM's policy on providing information to owners is included in the briefing packet and will apply uniformly to all families and owners.

**J. OWNER DISAPPROVAL [24 CFR 982.306]**

See Chapter 16, "Owner Disapproval and Restriction" of this Administrative Plan."

**K. CHANGE IN TOTAL TENANT PAYMENT (TTP) PRIOR TO HAP EFFECTIVE DATE**

When the family reports changes in factors that will increase the Total Tenant Payment (TTP) prior to the effective date of the HAP contract at admission, the information will be verified but the TTP will not be recalculated until the first of the month following the lease up date/admission date. However, if the increase results in the family being over the low income limits for the Housing Choice Voucher program, the application will be withdrawn.

The TTP will be recalculated before the HAP contract is executed if the information results in a decrease to the TTP. If the family does not report any change, the HACM need not obtain new verifications before signing the HAP Contract, even if verifications are more than 60 days old.

If family is transferring from one unit to another, and annual re-examination was conducted within 4 months, the HACM does not need to re-verify income at the time the HAP contract and lease is executed, unless there has been a change in income.

**L. CONTRACT EXECUTION PROCESS [24 CFR 982.305]**

The HACM prepares the Housing Assistance Payment Contract (HAP) for execution. The family and the owner will execute the lease agreement, and the owner and the HACM will execute the HAP Contract. Copies of the documents will be furnished to the parties who signed the respective documents. The HACM will retain a copy of all signed documents.

The HACM makes every effort to execute the HAP Contract before the commencement of the lease term. The HAP Contract may not be executed more than sixty (60) days after commencement of the lease term and no payments will be made until the contract is executed.

The following HACM representative(s) is/are authorized to execute a contract on behalf of the HACM: Eligibility Specialists/ **Lead Eligibility Specialists**, ~~Supervisors; Housing Choice Voucher Manager;~~ Housing Choice Voucher Director; Executive Director.

~~Owners must provide an Employer Identification Number or Social Security Number.~~

~~Owners must also submit proof of ownership of the property, such as a Grant Deed or Tax Bill, and a copy of the management agreement if the property is managed by a management agent, or have the HACM's Agent's Authorization form signed. HACM reserves the right to determine if verification submitted is sufficient or whether additional verification will be required.~~

~~The payee must provide a signed W-9 properly completed.~~

~~The owner must provide a home and business telephone number if applicable.~~

~~Unless their lease was effective prior to June 17, 1998, a family may not lease properties owned by a parent, child, grandparent, grandchild, sister or brother of any family member.~~

Owners must provide the current address of their residence (not a Post Office box). If families lease properties owned by relatives, the owner's current address will be compared to the subsidized unit's address.

Owners must provide a Federal Employer Tax Identification number or Social Security number. The owner must provide a home telephone number and business number if applicable. A driver's license or other photo identification may be requested. Owners must also submit proof of ownership of the property, such as a Grant Deed or Tax Bill, and a copy of the Management Agreement if the property is managed by a management agent.

Unless their lease was effective prior to June 17, 1998, a family may not lease properties owned by a parent, child, grandparent, grandchild, sister or brother of any family member. The HACM will waive this restriction as a reasonable accommodation for a family member who is a person with a disability.

**M. CHANGE IN OWNERSHIP (Also see Chapter on "Owner Disapproval and Restriction")**

A change of ownership does not require execution of a new contract.

- The HACM will process a change of ownership only upon written request of the new owner and only if accompanied by a copy of the escrow statement or other document showing the transfer of title and the Employee Identification Number or Social Security number of the new owner, along with a completed IRS form, W-9.
- The change of ownership cannot be backdated. When written verification of the change has been received by the HACM, the change will be effective the first of the following month.
- In changes of ownership, involving a divorce/dissolution, written verification as stated in first bullet will be required.

## Chapter 10

### HOUSING QUALITY STANDARDS AND INSPECTIONS [24

#### CFR 982.401]

#### **INTRODUCTION**

Housing Quality Standards (“HQS”) are the HUD minimum quality standards for tenant-based programs. HQS standards inspections are required both at initial occupancy and during the term of the lease. HQS standards apply to the building and premises, as well as the unit. Newly leased units must pass the HQS inspection before the beginning date of the assisted lease and HACM Housing Assistance Payment (HAP) contract.

The HACM may inspect each unit under contract at least annually/biennially. Biennial inspections may be utilized for units that have a record of good property maintenance and have two consecutive passes (pass or a pass with comment) on the last two annual HQS inspections. The HACM shall have a supervisor or other qualified person perform quality control inspections on the number of files required for file sampling by Section Eight Management Assessment Program (SEMAP) annually to maintain the HACM’s required standards and to assure consistency in the HACM’s program. This Chapter describes the HACM’s procedures for performing HQS and other types of inspections and HACM standards for the timeliness of repairs. It also explains the responsibilities of the owner and family, and the consequences of non-compliance with HQS requirements for both families and owners. The use of the term "HQS" in this Administrative Plan refers to the combination of both HUD and HACM requirements. (See the additions to HQS listed under “Acceptability Criteria and Exceptions to HQS” later in this chapter).

#### **A. GUIDELINES/TYPES OF INSPECTIONS [24 CFR 982.401(a), 982.405]**

The HACM has adopted local requirements of acceptability in addition to those mandated by the HUD Regulations.

All units must meet the minimum standards set forth in the Building/Housing Code. In cases of inconsistency between the Code and these HQS, the stricter of the two shall prevail.

Efforts will be made at all times to encourage owners to provide housing above HQS minimum standards. The HACM will not promote any additional acceptability criteria which are likely to adversely affect the health or safety of participant families, or severely restrict housing choice.

All utilities must be in service prior to the effective date of the HACM contract inspection. If the Inspector goes out to a unit and the utilities are not on, the Inspector will not conduct the inspection. If the utilities are not in service at the time of inspection, the Inspector will notify the tenant or owner (whomever is responsible for the utilities according to the RFTA) to have the utilities turned on. A n i nspection will be re-scheduled.

If the tenant is responsible for supplying the stove and/or the refrigerator, the HACM will allow the stove and refrigerator to be placed in the unit after the HACM passed all other HQS requirements. The family must then certify that the appliances are in the unit. The HACM may or may not conduct a re-inspection.

There are four types of inspections the HACM will ~~conduct~~ perform:

1. Initial/move-in: **conducted upon receipt of Request for Tenancy Approval (RFTA)**
2. Annual/Biennial Inspections:
  - Annual inspections may be conducted within 12 months of the last HACM inspection.
  - Biennial Inspections may be conducted within 24 months of the last HACM inspection.

High performing units that have a history of passing HQS Inspections may qualify for biennial Inspections

3. Special/complaint: at the request of owner, family, an agency or a third-party a unit may be inspected to ensure compliance with HACM and HQS standards.
4. Quality Control: HACM will conduct inspections on a random sample of units to ensure consistency and accuracy.

**B. INITIAL HQS INSPECTION [24 CFR 982.401(a), 982.305(b) (2)] Timely Initial HQS Inspection**

The HACM will make every reasonable effort to conduct initial HQS inspections for the family and owner in a manner that is time efficient and indicative of good customer service. The HACM will periodically review the average time required for a family and owner to have a unit inspected from the time the RTA is submitted by the family and owner to the Housing Authority.

The HACM will inspect the unit, determine whether the unit satisfies the HQS and notify the family and owner of the determination within fifteen (15) days unless the HACM determines that it is unable to do so in the stated timeframe, in which case the file will be appropriately documented.

If the HACM determines after a review of files that the average time for a family and owner to obtain an initial inspection is longer than fifteen (15) days, the HACM will review staffing needs relevant to the HQS inspection.

The initial inspection will be conducted to:

- Determine if the unit and property meet the HQS defined in this Administrative Plan.
- Document the current condition of the unit as to assist in future evaluations whether the condition of the unit exceeds normal wear and tear.
- Document the information to be used for determination of rent-reasonableness.
- If the unit fails the initial HQS inspection, the family and owner will be advised to notify the HACM once repairs are completed.

On an initial inspection, the owner will be given up to thirty (30) days to correct the items noted as fail, at the inspector's discretion, depending on the amount and complexity of work to be done.

If the time period given by the Inspector to correct the repairs has elapsed, or the maximum number of failed re-inspections has occurred, the family must select another unit. The owner will be allowed up to two (2) re-inspections for repair work to be completed.

**C. ANNUAL/BIENNIAL HQS INSPECTIONS [24 CFR 982.405(a)]**

The HACM conducts an inspection in accordance with HQS at least annually, as required by SEMAP. Special inspections may be scheduled between anniversary dates. HQS deficiencies, which cause a unit to fail, must be corrected by the landlord, unless it is a deficiency for which the tenant is responsible.

In accordance with Section 220 of the 2014 Appropriations Act, the HACM may conduct biennial inspections in lieu of annual inspections. Once the HACM has conducted a complete inspection under a Housing Assistance Payment Contract, it may not re-inspect until the lapse of 24 months following the last inspection. This does not apply to initial inspections for units that are not yet under a Housing Assistance Payment Contract. Initial inspections are still required. The HACM will continue to conduct special inspections on an as needed basis. The HACM may conduct more frequent inspections on units under Housing Assistance Payment Contract that are suspected of detrimental failed items.

The family must allow the HACM to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)]. Inspections will be conducted on business days only. Reasonable hours to conduct an inspection are between 7:30 a.m. and 5:00 p.m. The HACM will notify the family in writing or by phone at least 24 hours prior to the inspection.

The family and owner are notified of the date and time of the inspection appointment by mail and/or phone. If the family is unable to be present, they may authorize a representative who is 18 years of age or older to be present to allow the inspector access to unit to conduct the inspection. The family may provide written permission for the property manager or owner to allow the inspector entry into the unit or the family must reschedule the appointment so that the inspection is completed within thirty (30) days.

If the unit fails the inspection, the family and owner are notified of the deficiencies by mail. Verification that the deficiencies are corrected may be done by other means than a re-inspection. If the family is not at home for the re-check appointment, a card will be left at the unit and a final appointment is automatically scheduled. The appointment letter contains a warning of abatement (in the case of owner responsibility) and a notice of the owner's responsibility to notify the family.

If the family misses two (2) inspection appointments, the family has violated a family obligation and their assistance will be terminated in accordance with the termination procedures in this Administrative Plan.

#### **Time Standards for Repairs**

Emergency items which endanger the family's health or safety must be corrected by the owner within 24 hours of notification .

For non-emergency items, repairs must be made within 30 days. For major repairs, the Inspector may approve an extension beyond 30 days.

#### **Rent Increases**

Rent to owner increases will not be approved if the unit is in a failed condition. Rent increases will not be approved within the initial contract term. The unit must have had a passed an HQS inspection within the previous twelve (12) month period.

#### **D. SPECIAL/COMPLAINT INSPECTIONS [24 CFR 982.405(c)]**

If at any time the family or owner notifies the HACM that the unit does not meet HQS, the HACM may conduct an inspection.

The HACM may also conduct a special inspection based on information from third parties such as neighbors or public officials.

The HACM will inspect only the items which were reported, but if the inspector notices additional deficiencies that would cause the unit to fail HQS, the responsible party will be required to make the



necessary repairs.

If the annual inspection date is within one hundred twenty (120) days of a special inspection, and as long as all items are inspected that are included in an annual inspection, the special inspection will be categorized as an annual and all annual procedures will be followed.

**E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b)]**

Quality Control inspections may be performed by the Director of Housing Programs or his/her designee **on the number of files required by SEMAP**. The purpose of Quality Control inspections is to ascertain that each inspector is conducting accurate and complete inspections, and to ensure that there is consistency among inspectors in application of the HQS.

The sampling of files will include recently completed inspections (within the prior three (3) months), a cross-section of neighborhoods, and a cross-section of inspectors.

**F. ACCEPTABILITY CRITERIA AND EXCEPTIONS TO HQS [24 CFR 982.401 (a)]  
CALIFORNIA HEALTH AND SAFETY CODE 13260**

The HACM adheres to the acceptability criteria in the program regulations with local codes and the additions described below:

**Smoke detectors for persons with hearing disabilities.** One smoke detector for the hearing impaired will be required in the household per the following criteria:

- Must meet National Fire Protection Association Standard 74 (or its successor standard).
- Must be located within the bedroom of the hearing impaired person. If existing smoke detectors are hardwired, the smoke detector designed for the hearing impaired must be hardwired to the primary smoke detector. If the existing smoke detector system is not hardwired, the hearing impaired smoke detector must be installed within the bedroom. It is not required to be hardwired but must have a battery back-up.
- Hearing impaired smoke detectors must meet the following qualifications:
  - 177 candela strobe light
  - 85 decibel (dBA)

The HACM may accept landlord or tenant certification that the appropriate criteria has been met.

**Carbon monoxide detector.** California Health and Safety Code 13260 requires that an owner or owner's agent of a dwelling unit intended for human occupancy that rents or leases the dwelling unit to a tenant shall maintain carbon monoxide devices in the dwelling unit.

Carbon Monoxide detectors shall be installed on every floor, including the basement and outside each sleeping area.

The carbon monoxide device shall be operable at the time that the tenant takes possession of the unit. A tenant shall be responsible for notifying the owner or owner's agent if the tenant becomes aware of an inoperable or deficient carbon monoxide device within his or her unit. The owner or owner's agent shall correct any reported deficiencies or inoperability's in the carbon monoxide device.

California's Carbon Monoxide Poisoning Prevention Act of 2010 requires that all residential properties be equipped with a carbon monoxide detector when the property has a fossil fuel burning heater such as a gas stove, gas furnace, gas water heater or any other appliance, fireplace, and/or

attached garage. All single family homes in the above mentioned structure types must be equipped with a detector on or before July 1, 2011.

All other multi-family residential units (apartments, duplex's, etc.) must be equipped with a carbon monoxide detector on or before January 1, 2013.

**Bedrooms.** A bedroom must have a floor area of not less than seventy (70) square feet.

Bedrooms in basements or attics are not allowed unless they meet local code requirements; must have adequate ventilation, emergency exit capability and a smoke detector.

Minimum bedroom ceiling height is 7'6" or local code, whichever is greater.

Sloping ceilings may not slope to lower than five feet in the 70 square foot area.

Access to any required exits of a room or suite of rooms designated as bedrooms for these purposes is permissible passing through a bathroom, toilet room, or another bedroom, if all bedrooms or rooms used as sleeping areas have an emergency exit.

Each bedroom must have a window present that can be opened.

Rooms identified as bedroom must have a closet and a door for privacy.

- Free standing closets may substitute built-in closets, if no hazard is posed.
- If a closet is present, a clothes pole must be provided by the owner.
- Closet doors are not required; will be considered a tenant preference.
- Closet door guides will not be required if it does not pose a potential safety risk.

**Cabinets.** If present, cabinet drawers and doors must be intact, with proper door hinges and on tracks.

**Countertops.** In areas where tile is broken or grout is missing, it must be repaired or replaced if it poses a ~~sanitary~~ any hazard.

**Doors.** Doors cannot have double key dead bolt locks. The exterior doors of the dwelling unit must be lockable. Exterior doors are doors by which someone can enter or exit the dwelling unit.

All exterior doors must be weathertight to avoid any air or water infiltration, have no holes larger than the size of a quarter (coin), have all trim intact, and have a threshold.

All interior doors must have a doorknob and all trim intact. Tenant must have keys.

Doors must be present on all bedrooms and rooms used for sleeping and bathrooms. Doors need not be present on the master bedroom bathroom.

All exterior doors must have single cylinder deadbolt locks, front and back doors, which includes the garage door. Garage door to the interior of the unit must have self-closing hinge and be solid (no windows).

**Fences.** For safety reasons, owners may be requested to install, repair or remove a fence.

**Floors.**

- All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be resecured and made level. If they cannot be leveled, they must be replaced.
- All floors must be in a finished state, including common hallways and balconies.

**Electricity.**

- GFCI outlets must work properly. If 3-prong, must be grounded.
- No open light sockets allowed.
- Globes on interior lights are not required.

**Landscaping.** All yards must conform to neighborhood standards. Single family units or duplexes must have one operating outside water faucet.

**Mail Boxes.** Each unit must have its own official mailbox where the U.S. Postal Service officially delivers mail to the physical addresses.

**Miscellaneous.**

The existence of any unused and abandoned open pipe, well, or excavation, building foundation, or buildings which are abandoned, or boarded up, partially destroyed, or unfinished and not properly secured on the property is prohibited.

The keeping and storage of property owned by the owner on the property is **may** allowable if:

- Property is in storage shed that is locked.
- Accessible to the Owner without disturbing tenant.
- Storage shed detached from the unit.
- No hazardous materials can be stored in the shed.
- Allowable if detached garage; however, all of the above applies and in addition,
  - HACM will require signed statement from participant that they are aware and allowing owner permission to store belongings in the detached garage.
  - ~~HACM will reduce contract rent by at least \$20 in order to comply with rent reasonableness~~
  - The keeping and storage of an inoperable, dismantled, or not currently registered automobile, trailer, house trailer, boat or vehicle or major part thereof within the view of persons on the public streets or other properties adjacent to said premises is prohibited.

Tenant may not park vehicles on the lawn.

~~Swimming pools are allowed in single family and multi family units, as long as they are properly secured and must be clean and sanitary to avoid health hazards. Swimming pools are defined as pools that are more than 2 feet in depth. Included but not limited to: Wading/swimming pools, below or above ground pools, ponds requiring filters. They must be properly secured with a fence that separates it from the remainder of the yard, have a self locking gate, fence must be at least 4 feet high and recommended pool gate alarm.~~

~~Community swimming pools, such as those in an apartment complex, must be at all times clean and sanitary, to avoid health hazards. In addition, pool must be secured with a fence/security gate at times when pool is not open. Management must take all other signs and safety precautions adhering to pool regulations.~~

Fireplaces must have a “cap”/spark arrester. The HACM may require at the time of inspection that the chimney be cleaned and/or inspected.

**Modifications.** Modifications or adaptations to a unit due to a disability must meet all applicable HQS and building codes.

Extension for repair items not required by HQS will be granted for modifications/adaptations to the unit if agreed to by the tenant and landlord. HACM will allow execution of the HACM contract if unit meets all requirements and the modifications do not affect the livability of the unit.

**Pools.** Swimming pools are allowed in single family and multi-family units, as long as they are properly secured and must be clean and sanitary to avoid health hazards. Swimming pools are defined as pools that are more than 2 feet in depth. Included but not limited to: Wading/swimming pools, below or above ground pools, ponds requiring filters. They must be properly secured with a fence that separates it from the remainder of the yard, have a self-locking gate, fence must be at least 4 feet high and recommended pool gate alarm.

Community swimming pools, such as those in an apartment complex, must be at all times clean and sanitary, to avoid health hazards. In addition, pool must be secured with a fence/security gate at times when pool is not open. Management must take all other signs and safety precautions adhering to pool regulations.

**Sanitary.** The HACM may fail unsanitary conditions where exposed food, garbage, and excrement exist to a degree where health may be endangered.

Trash bags will not be considered "adequate covered facilities" in buildings with four or more units.

Private water supply systems (wells) may be required to be tested.

Septic tanks will require leechlines.

Excessive grease buildup on the stove or overhead is considered a fail item due to fire hazard.

The accumulation of waste paper, hay, grass, dirt, straw, weeds, litter or combustible trash upon the premises or in front of said premises or upon any roof or building, entrance way, court, or yard is a condition detrimental to health, safety, or general welfare is prohibited.

**Security.** If window security bars or security screens are present on an emergency exit window, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

**Sinks.** All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

Garbage disposal must have acceptable splashguard.

Worn splashguards are unacceptable.

**Toilet Seats.** Cracked toilet seats and tank lids must be replaced.

Toilet tank lid must fit properly

**Utility Meters.** Each unit must have individual meters to measure the family's consumption if they are to be responsible for paying certain utilities, such as gas, water and electricity. The owner will be responsible for paying utilities for units with centralized meters.

**Windows.**

- All window sashes must be in good condition, solid and intact, and fit properly in the window frame. Damaged or deteriorated sashes must be replaced.
- Windows must be weather-stripped as needed to ensure a watertight seal.
- Any room for sleeping must have a window.
- Units ~~will~~ may be required to have an air conditioning unit or evaporative cooler supplied by the owner. However, if the tenant's preference is not to have an air cooling device, the unit will then be required to have screens on all exterior doors and windows at the time of the initial and annual inspection. (Windows must open ~~to outside~~). In all other initial and annual inspections, the unit will require one screen at one window per room. All screens must be in place on all second story and higher windows at all times.
- Window screens must be in good condition. (Applies only if screens are present or a required per HQS.)

**Water Heater.** Water heaters must have a temperature-pressure relief valve and discharge line (directed towards the floor or outside of the living area) as a safeguard against buildup of steam if the water heater malfunctions. Discharge pipes must be made of rigid pipe material (not garden hose or thin plastic pipe). Water heaters shall be anchored, braced or strapped to resist horizontal displacement due to earthquake motion. Strapping shall be at points within the upper one-third and lower one-third of the appliance's vertical dimensions. At the lower point, the strapping shall maintain a minimum distance of 4 inches above the controls.

**Walls.** In areas where plaster or drywall is sagging, severely cracked or otherwise damaged, it must be repaired or replaced.

Any exterior or interior surfaces with peeling or chipping paint on units built prior to 1978 must be scraped and painted with two coats of unleaded paint or other suitable material, according to lead-based paint abatement regulations. If the peeling or chipping paint is excessive on units built 1978 and after, scraping and repainting will also be required.

Any exterior or interior surfaces with graffiti must be painted with as many coats of unleaded paint or other suitable material to cover all the graffiti.

All walls in a tub or shower area must be covered with ceramic tile or other material that is impervious to water to prevent water damage and eventual deterioration.

Any exterior vents must be covered to prevent rodents from entering the unit.  
Visible mold/mildew must be eliminated

**Tenant Preference Items**

HUD requires the HACM to enforce minimum HQS but also requires that certain judgment about acceptability be left to the family.

**G. EMERGENCY REPAIR ITEMS [24 CFR 982.404]**

Emergency items that are identified through an inspection or verified by another public agency which endanger the family's health or safety must be corrected by within twenty-four (24) hours of notification.

The following items are considered of an emergency nature and must be corrected **by the owner or tenant (whoever is responsible)** within twenty-four (24) hours of notice by the HACM:

- 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 leak or fumes.
- Electrical problem which could result in shock or fire.
- Absence of a working heating system when outside temperature is below 50 degrees Fahrenheit on the day of inspection. If there is a weather forecast predicating temperatures to be below 50 degrees Fahrenheit at any point within 48 hours of the actual time of inspection, the absence of a working heating system will be addressed immediately as a health and safety issue on a case-by-case basis.
- Utilities not in service, including no running hot water.
- Broken glass where someone could be injured.
- Conditions that present imminent possibility of injury.
- Obstacles that prevent safe entrance or exit from the unit.
- Absence of any functioning toilet in the unit.
- Inoperable smoke detector.
- Inoperable carbon monoxide detector.
- Window bars in bedrooms with no release mechanism.
- Combustible materials near the gas water heater or gas furnace.

The HACM may give a short extension (not more than 72 additional hours) whenever the responsible party cannot be notified or it is impossible to ~~affect~~ **correct** the repair within the twenty- four (24) hour period.

In those cases where there is leaking gas or potential of fire or other threat to public safety, and the responsible party cannot be notified or it is impossible to ~~affect the repair~~, **make the repair**, proper authorities will be notified by the HACM.

If the emergency repair item(s) are not corrected in the time period required by the HACM **and the owner is responsible**, the HAP will be abated and the HAP Contract will be terminated.

If the emergency repair item(s) are not corrected in the time period required by the HACM, and it is an HQS breach which is a family obligation, the HACM will terminate the assistance to the family.

**Smoke Detectors**

**Inoperable smoke detectors are a serious health threat and will be treated by the HACM as an emergency (24 hour) fail item.**

**Each dwelling unit must have at least one battery-operated or hard-wired smoke detector, in proper**

operating condition, on each level of the dwelling unit, including basements (except for crawl spaces and unfinished attics). Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing impaired person, smoke detectors must have an alarm system, designed for hearing impaired person as specified in NFPA 74 (or successor standards).

If the smoke detector is not operating properly the HACM will contact the owner by phone and request the owner to repair the smoke detector within 24 hours.

If the HACM determines that the family has purposely disconnected the smoke detector (by removing batteries or other means), the family will be required to repair the smoke detector within 24 hours and the HACM will re-inspect the unit the following day.

The HACM will issue a written warning to any family determined to have purposely disconnected the unit's smoke detector. The warning will state that deliberate disconnection of the unit's smoke detector is a health and fire hazard and is considered a violation of the HQS.

### **Carbon Monoxide Detectors**

California Health and Safety Code 13260 requires that an owner or owner's agent of a dwelling unit intended for human occupancy that rents or leases the dwelling unit to a tenant shall maintain carbon monoxide devices in the dwelling unit.

Carbon Monoxide detectors shall be installed on every floor, including the basement and outside each sleeping area. The carbon monoxide device shall be operable at the time that the tenant takes possession of the unit. A tenant shall be responsible for notifying the owner or owner's agent if the tenant becomes aware of an inoperable or deficient carbon monoxide device within his or her unit. The owner or owner's agent shall correct any reported deficiencies or inoperability's in the carbon monoxide device.

California's Carbon Monoxide Poisoning Prevention Act of 2010 requires that all residential properties be equipped with a carbon monoxide detector when the property has a fossil fuel burning heater such as a gas stove, gas furnace, gas water heater or any other appliance, fireplace, and/or attached garage. All single family homes in the above mentioned structure types must be equipped with a detector on or before July 1, 2011.

All other multi-family residential units (apartments, duplex's, etc.) must be equipped with a carbon monoxide detector on or before January 1, 2013.

## **H. CONSEQUENCES IF OWNER IS RESPONSIBLE (NON-EMERGENCY ITEMS) [24 CFR 982.405, 982.453]**

When it has been determined that a unit on the program fails to meet HQS, and the owner is responsible for completing the necessary repair(s) in the time period specified by the Housing Authority, the HAP to the owner will be abated. **Abatement**

If an owner fails to correct HQS deficiencies by the time specified by the HACM, HUD requires the HACM to abate housing assistance payments. No retroactive payments will be made to the owner for the period of time the rent was abated and the unit did not comply with HQS. The notice of abatement states that the tenant is not responsible for the HACM's portion of rent that is abated. Owner rents are not abated as a result of HQS violations caused by the family.

~~A notice of abatement and termination of contract will be sent to the owner after the unit is found in noncompliance with the HACM local inspection standards at the correction date. The abatement~~

~~will be effective from the first day of the month after the date of the failed reinspection. The contract termination date will be 30 days after the effective date of the abatement.~~

~~The owner may still make repairs on the unit during the abatement period. However, the owner must notify the HACM in writing that all repairs have been completed. After receiving notification of completed repairs, the HACM may conduct a reinspection. The family and owner will be notified of the reinspection date in writing.~~

~~No retroactive payments will be made to the owner for the period of time the rent was abated and the unit did not comply with HQS. The notice of abatement states that the tenant is not responsible for the HACM's portion of rent that is abated.~~

### **Extensions**

Extensions will be granted in cases where the HACM has determined that the owner has made a good faith effort to correct the deficiencies and is unable to do so for reasons beyond the owner's control such as:

- There is an unavoidable delay in completing repairs due to difficulties in obtaining parts contracting for services.
- The repairs are expensive (such as exterior painting or roof repair) and the owner needs time to obtain the funds.
- The repairs must be delayed due to climate conditions.
- Other extenuating circumstances may be considered by the HACM on a case by case basis.

The extension will be made for a period of time not to exceed ninety (90) days. At the end of that time, at the HACM's discretion, if the work is not completed or substantially completed, the HACM will begin the abatement.

~~The HACM will grant an extension in lieu of abatement in the following cases:~~

- ~~There is an unavoidable delay in completing repairs due to difficulties in obtaining parts or contracting for services.~~
- ~~The owner makes a good faith effort to make the repairs.~~



- ~~The repairs must be delayed due to climate conditions.~~

### Termination of Contract

If the owner is responsible for repairs and fails to correct all the deficiencies cited prior to the end of the abatement period, **the owner will be sent a HAP Contract Proposed Termination Notice. Prior to the effective date of the termination, the abatement will remain in effect. The participants will receive a copy of the notice. If the tenant wishes to vacate the unit the participant must give the owner proper notice to move and the participant may be issued a voucher, as long as the family is in compliance with family obligations.**

If repairs are completed before the effective termination date, the termination may be rescinded by the HACM if the tenant chooses to remain in the unit.

## I. DETERMINATION OF RESPONSIBILITY [24 CFR 982.404]

The family is responsible for a breach of the HQS that is caused by any of the following:

- The family fails to pay for any utilities **that the owner is not required to pay for, but which are to be paid by the tenant;**
- The family fails to provide and maintain any appliances **that the owner is not required to provide, but which are to be provided by the tenant; or**
- Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear. **Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice.**

The owner may be responsible for all other HQS violations, other than those listed above. The owner is responsible for vermin infestation even if caused by the family's living habits. However, if such infestation is serious and repeated, it may be considered a lease violation and the owner may evict for serious or repeated violation of the lease. The HACM may terminate the family's assistance on that basis.

The inspector will make a determination of owner or family responsibility during the inspection to the best of their ability. If the family is responsible but the owner carries out the repairs, the owner will be encouraged to bill the family for the cost of the repairs.

## J. CONSEQUENCES IF FAMILY IS RESPONSIBLE [24 CFR 982.404(b)]

If emergency or non-emergency violations of HQS are determined to be the responsibility of the family, the HACM will require the family make any repair(s) or corrections within 24 hours for emergency violations and thirty (30) days for non-emergency. If the repair(s) or correction(s) are not made in this time period, the HACM will terminate assistance to the family, **and provide an opportunity for an informal hearing.** The owner's rent will not be abated for items which are the family's responsibility

**Extensions in these cases must be approved by the Director of Housing Program or his or her designee. The owner's rent will not be abated for items which are the family's responsibility.** If the tenant is responsible and corrections are not made, the HAP Contract will terminate when assistance is terminated.

~~If the tenant is responsible and corrections are not made, the HACM Contract will~~

~~terminate when assistance is terminated.~~

~~A letter will be sent to the family and a copy to Landlord, advising landlord that the contract may be terminated immediately if family fails to comply and correct HQS deficiencies.~~

~~Family and Landlord are verbally notified of violation and that the family has 24 hours from time of notification to rectify the situation by providing written verification to the HA of the corrected HQS violation.~~

### **LEAD-BASED PAINT AND HQS [24 CFR Part 35]**

In order to comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the HUD regulations of September 15, 1999 the HACM will adopt the following policies. For all pre-1978 dwelling units with a child under 6 years of age, during the initial and annual inspections, the HACM will conduct a visual assessment of all painted surfaces in order to identify any deteriorated paint. If deteriorated paint is found, the owner will be required to perform paint stabilization. If the area to be stabilized is above “de minimis levels”, the owner will be required to use “safe work practices” as defined in 24 CFR Part 35.1350. For common terms used regarding lead hazard reduction see the end of this section.

#### **Owner Responsibilities**

The owner must notify the HACM and the family if aware of any known lead-based paint or lead-based paint hazards on the premises. This must occur prior to execution of the HAP contract.

The owner must perform paint stabilization when required by the HACM as a result of an HQS inspection.

Where a pre-1978 dwelling unit is occupied by a child of less than 6 years of age with an Environmental Intervention Blood Lead Level (EIBLL), the owner will:

- Be required to allow the HACM to conduct a risk assessment of the dwelling unit;
- Be advised of the risk assessment inspection and given the opportunity to be present;
- Upon receipt of a written report of the results of the above inspection, the owner must post notice to the tenant;
- If hazard conditions exist, the owner must comply with the scope of the work within 30 days;
- Once interim controls or abatement (corrective actions to reduce or eliminate LBP hazards) have been completed, the owner must contract with a Certified Lead Inspector (CLI) for a clearance examination;
- Once cleared by the CLI, a copy of the Clearance Report must be provided by the owner to the HAFC.

#### **HACM Responsibilities**

The HACM staff will conduct a visual assessment at initial and periodic inspections. If during the inspection the family informs the HACM staff person there is a child under 6 years of age with an EIBLL, staff is to give a written report to a Housing Choice Voucher Director of Housing Programs.

The HACM will attempt to obtain from the health department names and/or addresses of

children with EIBLL's. Such information will be matched with HACM address records of assisted families.

The HACM will report to the health department addresses of assisted units, unless the health department states it does not want such a report.

Lead-based paint inspection reports, with owner certifications, will be kept for a minimum of three years; indefinitely if chewable surfaces require testing.

As part of the briefing of applicant/participant families, the HACM will provide the household with a copy of the HUD brochure, "Protect Your Family from Lead in Your Home".

Where a pre-1978 dwelling unit is occupied by a child of less than 6 years of age with an EIBLL and the HACM has received EIBLL notification by the health department or other medical health care provider, the HACM will:

- Schedule a risk assessment within 15 days and give the owner an opportunity to be present;
- Place the housing assistance payment on hold, if the written report reveals items which must be corrected;
- Notify the owner in writing of the hold, and of the Lead Based Paint Hazard Reduction Procedures [letter], giving 30 days to correct all items;
- Upon receipt of a clearance form per 24 CFR 35.1340, will release the Housing Assistance Payment;
- Notify the owner and family in writing of termination of the contract and housing assistance payments if the required clearance form is not provided by the end of the 30-day correction period;
- If the owner does not obtain a clearance, or if the family decides not to stay in the unit, the HACM will process the family's request to transfer to another unit, if the family serves a proper notice of intent to vacate and meets the other requirements to transfer.

The unit will be taken off the program and the property tracked so that it will not be allowed back on the program until such time as a clearance is supplied.

#### **Common Definitions Regarding Lead-Based Paint**

Below are some of the key terms used in this section. Other definitions are located in 24 CFR Part 35.7, 35.110.

**Abatement** means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes:

- The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and
- All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

**Certified [Inspector]** means licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision, either by a State or Indian tribe with a lead-based paint certification program authorized by the Environmental Protection Agency (EPA), or by the EPA, in accordance with 40 CFR part 745, subparts L or Q.

**Clearance Examination** means an activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in 24 CFR Part 35, exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples. Dust-lead standards for clearance are found in 24 CFR Part 35.1320.

**De Minimis Levels (aka De Minimis Rule) means:**

- 20 sq ft on exterior surfaces,
- 2 sq ft in any one interior room, or
- 10% of total surface area of an interior or exterior type component with a smaller surface area (e.g., window sills)

**Deteriorated Paint** means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

**Environmental Intervention Blood Lead Level (EIBLL)** means a confirmed concentration of lead in whole blood equal to or greater than 20 ug/dl (micrograms of lead per deciliter) for a single test or 15 to 19 ug/dl in two tests taken at least 3 months apart.

**Hazard Reduction** means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

**Interim Controls** means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

**Paint Stabilization** means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying new protective coating or paint.

**Risk Assessment** means: (1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and (2) The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

**Visual Assessment** means looking for, as applicable: (1) Deteriorated paint; (2) Visible surface dust, debris, and residue as part of a risk assessment or clearance examination; or (3) The completion or failure of a hazard reduction measure.

## Chapter 11

### OWNER RENTS, RENT REASONABLENESS, AND PAYMENT STANDARDS [24

CFR 982.503, 982.504, 982.505, 982.507]

#### **INTRODUCTION**

The policies in this chapter reflect the amendments to the HUD regulations, which were implemented by the Quality Housing and Work Responsibility Act of 1998 for the Section 8 Tenant-Based Assistance Program. These amendments became effective on October 1, 1999, which is referred to as the “merger date”. These amendments complete the merging of the Section 8 Certificate and Voucher Programs into one program, called the Housing Choice Voucher Program.

All Section 8 participant families have been transitioned to the Housing Choice Voucher Program on or before October 1, 2001. Rent calculation methods for the Housing Choice Voucher Program are described at 24 CFR 982.505. The rent calculation formula is specific and is not subject to interpretation.

The HACM will determine rent reasonableness in accordance with 24 CFR 982.507(a). It is the HACM's responsibility to ensure that the rents charged by owners are reasonable based upon unassisted comparable units in the rental market, using the criteria specified in 24 CFR 982.507(b).

This chapter explains the HACM's procedures for determination of rent-reasonableness, payments to owners, adjustments to the payment standards, and rent adjustments.

#### **A. RENT TO OWNER IN THE HOUSING CHOICE VOUCHER PROGRAM**

The rent to owner is **not** only limited by rent reasonableness. The HACM must demonstrate that the rent to owner is reasonable in comparison to rent for other comparable unassisted units.

The only other limitation on rent to owner is the maximum rent standard at initial occupancy (24 CFR 982.508). At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, whether it is a new admission (in place or not) or a move to a different unit. The family share may not exceed 40 percent of the family's monthly adjusted income. This 40 percent comparison is used only when the gross rent of the chosen unit is more than the **applicable** payment standard for the family.

During the initial term of the lease, the owner may not raise the rent (contract rent) to owner.

When raising the rent, the owner must give at least a 60-day written notice to the tenant and HACM.

**When funding is available, the HACM will review the owner's request to increase the contract rent.**

#### **B. MAKING PAYMENTS TO OWNERS [24 CFR 982.451]**

Once the HAP Contract is executed, the HACM begins processing payments to the owner. A HAP register will be used as a basis for monitoring the accuracy and timeliness of payments. Changes are made automatically to the HAP register by the Business Services Department, for the following month. Checks are disbursed by the Accounting Department to the owner each month. Checks may be picked up by the owner at the HACM. Checks will only be disbursed on the first working day of the month. Exceptions may be made with the approval of the Director of Housing Programs in cases of hardship.

Checks that are not received will not be replaced until a written request has been received from the payee. The HACM will not submit a stop payment on the check until 10 days have elapsed from the date the check was issued.

### **Excess Payments**

The total of rent paid by the tenant plus the HAP to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the HACM.

Owners who do not return excess payments will be subject to penalties as outlined in this Administrative Plan.

### **Late Payments to Owners**

~~In keeping with generally accepted practices in the local housing market, the HACM must make HAP to the owner promptly and in accordance with the HAP contract.~~

The HACM must make HAP payments to the owner promptly and in accordance with the HAP contract.

The HACM will pay a late fee to the owner for HAP that are not received by the owner by the 5<sup>th</sup> business day of the month, if requested by the owner. Any such late fee to be paid by the HACM will be equal to, but not greater than, the established amount of late fee charged to their tenant for late payment.

Proof of “mailed to” date will be:

- The date the HAP register was run; if the first of the month falls on a weekend or legal holiday, payments will be mailed on the following business day.

Proof of “received by owner” will be:

- Five (5) calendar days after date of mailing by HACM or written certification from the owner, including but not limited to written information from the Post Office and/or postal carrier or other mail processing center. These terms apply to re-certifications only.

Payments to owners on all new contracts will be mailed within thirty (30) days of a passed HQS inspection, providing that all documents have been executed under program guidelines.

To assist the HACM in its outreach efforts to owners and to provide better customer service, the HACM will offer to make automatic monthly HAP deposits into the bank account of the owner. If the owner agrees to such an arrangement with the HACM, the date the bank shows as the deposit date, will be the official date of record and will be the determining factor in cases involving late payment penalties.

If Housing Assistance Payments are not paid promptly when due after the first two calendar months of the HAP contract term, the HACM shall pay the owner penalties if all of the following circumstances apply:

1. Such penalties are in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment of rent by a tenant;

2. It is the owner's practice to charge such penalties for assisted and unassisted tenants; and
3. The owner also charges such penalties against the tenant for late payment of family rent to owner.

The HACM will not be obligated to pay any late payment penalty if HUD determines that late payment is due to factors beyond the HACM's control, such as a delay in the receipt of program funds from HUD. The HACM will use administrative fee income or the administrative fee reserve as its only source for late payment penalty. The HACM will not use any program funds for the payment of late fee penalties to the owner.

#### **Special Adjustments [24 CFR 982. 510]**

~~An owner may request a special adjustment based on substantial and general increases in real property taxes, special government assessments, or costs of utilities. The rent requested must be found to be reasonable and must be approved by HUD.~~

#### **Disapproval of Requests for Adjustment**

~~If the HACM rejects the owner's request for rent adjustment as exceeding rent reasonableness and the owner rejects the HACM's determination, the owner must give at least a 30-day notice of non-renewal to the family in advance of the renewal date. If both parties agree on a shorter time period of non-renewal notice, that is acceptable as a valid notice of non-renewal. The HACM will issue a new Voucher to the family.~~

~~After the tenant has begun searching for a new housing unit, the owner may decide to accept the current lease. If the owner and tenant agree, the lease can continue, as long as it is not past the termination date of the lease.~~

~~If a new lease is executed, a new Contract must also be executed, and must be executed under the Housing Choice Voucher Program.~~

#### **C. RENT REASONABLENESS DETERMINATIONS [24 CFR 982.507]**

The HACM will determine and document on a case-by-case basis that the approved rent is reasonable in comparison to rent for other comparable unassisted units in the market. The HACM must ensure that the rents paid for HCV assisted units do not exceed the rents for comparable units that are not assisted under a Federal, State, or local government program.

The following are considered to be assisted units and will not be considered when determining rent reasonableness:

- Units where the rent and/or rent increases are controlled or restricted by law or court order
- In cases of a property undergoing a Housing Conversion Action, units occupied by tenants on the date of the eligibility event who do not receive vouchers are considered assisted if the owner chooses to continue below market rents to those families by offering lower rents or other rent concessions to the impacted families

The HACM will not approve a lease until it is determined that the initial rent to owner is a reasonable rent.

The HACM must re-determine the reasonable rent before any increase in the rent to owner, and if there is a five percent (5%) **or greater** decrease in the published Fair Market Rent (FMR) in effect sixty (60) days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect one year before the contract anniversary.

The HACM must re-determine rent reasonableness if directed by HUD and based on a need identified by the HACM's auditing system. The HACM may elect to re-determine rent reasonableness at any other time. At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or re-determined by the HACM.

The owner will be advised that by accepting each monthly Housing Assistance Payment (HAP), they will be certifying that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the same premises. **If requested, the owner must give the HACM information on rents charged by the owner for other units in the premises or elsewhere. The HACM will only request information on the owner's units elsewhere if the HACM has cause to demonstrate that the owner has a tendency to charge higher rents to program participants or if needed for rent reasonableness comparable.**

The data for other unassisted units will be gathered from title companies/ mail out to owners **newspapers, realtors, professional associations, inquiries of owners, market surveys, and other available sources.**

The market areas for rent reasonableness are census tracks, neighborhoods, and **zip codes** within the HACM's jurisdiction. Subject units within a defined housing market area will be compared to similar units within the same area.

The following items **will** **may** be used for rent reasonableness documentation

- Size (number of bedrooms, square footage)
- Location
- Quality
- Amenities (bathrooms, dishwasher, air conditioning, etc.)
- Housing services
- Age of unit
- Unit type
- Maintenance
- Utilities

### **Rent Reasonableness Methodology**

**Information is gathered on rental units in the HACM's market area, and each unit is rated using the HACM's rent reasonableness system.** The HACM maintains an automated database which includes data on unassisted units for use by staff in making rent reasonableness determinations and to identify the rents for units of like size and type within the same market area. **Each defined factor of the items listed above on the unit to be assisted will be compared, using a point adjustment system, to those factors of comparable unassisted units in the database.**

**The average will be adjusted up or down based on the dollar value of all HUD required comparable items in comparison with the total database.**



The HACM uses an appraisal method and tests the subject unit against selected units in the same area with similar characteristics. Adjustments are made for favorable and unfavorable differences between the subject unit and the comparables.

The HACM maintains an automated database which includes data on unassisted units for use by staff in making rent reasonableness determinations and to identify the rents for units of like size and type within the same market area.

The data is updated on an ongoing basis through mailings to local owners, and purged when it is more than 15 months old. Addresses are obtained through disks from a local title company. Comparability of each item listed above will be done by comparing the above items listed for rent reasonable documentation.

#### D. PAYMENT STANDARDS FOR THE VOUCHER PROGRAM [24 CFR 982.503]

The payment standard is used to calculate the HAP for a family. In accordance with HUD regulation, and at the HACM's discretion, the voucher payment standard amount is set by the HACM between ninety percent (90%) and one hundred ten percent (110%) of the HUD published Fair Market Rent (FMR). This is considered the basic range.

The HACM reviews the appropriateness of the payment standard annually when the FMR is published. In determining whether a change is needed, the HACM will ensure that the payment standard is **always** within the range of ninety percent (90%) and one hundred ten percent (110%) of the new FMR, **and will take into consideration Expanding Housing Opportunity when reviewing the new FMR's and payment standards, unless an exception payment standard has been approved by HUD.**

The HACM will establish a single voucher payment standard amount for each FMR area in the HACM's jurisdiction. For each FMR area, the HACM will establish payment standard amounts for each "unit size". The HACM may have a higher payment standard within the HACM's jurisdiction if needed to expand housing opportunities outside areas of minority or poverty concentration, as long as the payment standard is within the ninety percent (90%) and one hundred ten percent (110%) of FMR range.

**The HACM may approve a higher payment standard within the basic range, if required as a reasonable accommodation for a family that includes a person with disabilities.**

~~The HACM may approve a payment standard of not more than 120% of the FMR without HUD approval, if required as a reasonable accommodation for a family that includes a person with disabilities. (As per HUD PIH Notice 2013-03 expires March 31, 2015)~~

#### E. ADJUSTMENTS TO PAYMENT STANDARDS [24 CFR 982.503]

Payment standards may be adjusted, **within HUD regulatory limitations, to increase HAP in order to keep the family's rents affordable. The HACM will not raise payment standards solely to make "high end" units available to voucher holders.** The HACM may use some or all of the measures below in making its determination whether an adjustment should be made to the payment standards.

~~Payment Standards may be adjusted to increase Housing Assistance Payments in order to keep families' rents affordable. The HACM will not raise the Payment Standards so high that the number of families that can be assisted under available funding is substantially reduced. Nor will the HACM raise Standards if the need is solely to make "high end" units available to Voucher holders.~~

The HACM may use some of all of the measures below in making its determination whether an adjustment should be made to the Payment Standards.

### **Assisted Family Rent Burdens**

The HACM will review its voucher payment standard amounts at least annually to determine whether more than forty percent (40%) of families in a particular unit size are paying more than thirty percent (30%) of their annual adjusted income for rent.

If it is determined that particular unit sizes in the HACM's jurisdiction have payment standard amounts that are creating rent burdens for families, the HACM will modify its payment standards for those particular unit sizes.

The HACM will increase its payment standard within the basic range for those particular unit sizes to help reduce the percentage of annual income that participant families in the HACM's jurisdiction are paying.

The HACM will establish a separate voucher payment standard, within the basic range, for designated parts of its jurisdiction if it determines that a higher payment standard is needed in these designated areas to provide families with quality housing choices and to give families an opportunity to move outside areas of high poverty and low income.

### **Quality of Units Selected**

The HACM will review the quality of units selected by participant families before determining any change to the payment standard to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

### **HACM Decision Point**

The HACM will review the average percent of income that families on the program are paying for rent. If more than 40% of families are paying more than 30% of monthly adjusted income for a particular unit size, the HACM will determine whether families are renting units larger than their voucher size, and whether families are renting units which exceed HUD's HQS and any additional standards added by the HACM in this Administrative Plan.

If families are paying more than 30% of their income for rent due to the selection of larger bedroom size units or luxury units, the HAM may decline to increase the payment standard. If these are not the primary factors for families paying higher rents, the HACM will continue increasing the payment standard.

### **Rent to Owner Increases**

The HACM may review a sample of the units to determine how often owners are increasing rents after the first year of the lease and the average percent of increase by bedroom size.

### **Time to Locate Housing**

The HACM may consider the average time period for families to lease up under the voucher program.

### **Lowering of the Payment Standard (PIH 2011-28 (HA))**

Lowering of the FMR may require an adjustment of the payment standard. Additionally, statistical analysis may reveal that the payment standard should be lowered. In any case, the payment

standard will not be set below ninety percent (90%) of the FMR without authorization from HUD.

Housing Authorities experiencing financial difficulties may request a regulatory waiver for good cause so that reduced payment standards may be applied immediately.

**Decrease in the Payment Standard [24 CFR 982.505]**

If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount.

**Financial Feasibility**

Before increasing the payment standard, the HACM may review the budget and budget reserve to determine the impact projected subsidy increases would have on funding available for the program and number of families served.

For this purpose, the HACM will compare the number of families who could be served under a higher payment standard with the number assisted under current payment standards.

**File Documentation**

A file will be retained by the HACM for at least three years to document the analysis and findings to justify whether or not the payment standard was changed.

**A. EXCEPTION PAYMENT STANDARDS**

If the dwelling unit is located in an exception area, the HACM must use the appropriate payment standard amount established by the HACM for the exception area in accordance with regulation 24 CFR 982.503(c).

**B. OWNER PAYMENT IN THE HOUSING CHOICE VOUCHER PROGRAM [24**

**CFR 982.308(g)]** The owner is required to notify the HACM, in writing, at least sixty (60) days before any change in the amount of rent to owner is scheduled to go into effect. Any requested change in rent to owner will be subject to rent reasonableness requirements [24 CFR 982.507].

## Chapter 12

### RECERTIFICATIONS

[24 CFR 982.516]

#### **INTRODUCTION**

In accordance with HUD requirements, the HACM will reexamine the income and household composition of all families at least annually. Families will be provided accurate annual and interim rent adjustments. Re-certifications and interim examinations will be processed in a manner that ensures families are given reasonable notice of rent increases. 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 HACM's policy for conducting annual re-certifications and coordinating annual activities. It also explains the interim reporting requirements for families, and the standards for timely reporting.

#### **A. ANNUAL ACTIVITIES [24 CFR 982.516]**

There are two (2) activities the HACM must conduct on an annual basis. **These activities will be coordinated whenever possible:**

1. Recertification of income and family composition
2. HQS inspection

At each annual anniversary date of the HAP contract, the HACM **must adjust the rent to owner at the request of the owner. The rent must be reasonable (as determined by the HACM in accordance with 982.503).**

The HACM produces a monthly listing of units under contract to ensure that timely reviews of rent to owner, housing quality standards, and factors related to total tenant payment (TTP) can be made.

**Anniversary Date: Defined as annual re-examination date.**

**Reexamination of the family's income and composition must be conducted at least annually.**

**Annual inspections: See "Housing Quality Standards and Inspections."**

**Rent Adjustments: See "Owner Rents, Rent Reasonableness and Payment Standards."**

#### **Moves between Reexaminations**

At the discretion of the HACM when families move to another dwelling unit, an annual recertification may be scheduled (unless a recertification has occurred in the last one hundred twenty (120) days and the anniversary date will be changed). Income limits are not used as a test for continued eligibility at recertification. The transfer will be reported to HUD as an "other change of unit" and the anniversary date will remain the same annually.

#### **Reexamination Notice to the Family**

The HACM will maintain a reexamination tracking system and the household will be notified by **mail of the date and time for their interview at least ninety (90) days in advance of the anniversary date.** If requested as an accommodation by a person with a disability, the HACM will provide the notice in an accessible format. The HACM will also mail the notice to a third party, if requested as

reasonable accommodation for a person with disabilities.

These accommodations will be granted upon verification that they meet the need presented by the disability.

### **Reexamination Notice to the Family (Including HQS Inspection)**

The HACM will maintain a reexamination tracking system and the household will be notified by mail of their in home inspection. The letter is mailed at least 15 days before the in home inspection is scheduled, and approximately 3 ½ months in advance of the anniversary date, if the annual re-examination date coincides with the HQS inspection date. (If the annual re-examination date does not coincide with the HQS inspection date, notices for the HQS inspection and re-examination packet are mailed out). If requested as an accommodation by a person with a disability, the HACM will provide the notice in an accessible format. The HACM will also mail the notice to a third party, if requested as reasonable accommodation for a person with disabilities. These accommodations will be granted upon verification that they meet the need presented by the disability.

### **Procedure**

The HACM's procedure for conducting annual reexaminations will be: (If annual date coincides with HQS inspection date)

- Send notification letter to client at least 15 days before scheduled in home inspection notifying client of in home inspection date.
- The annual re-examination packet will be mailed to client. Instructions are included in the packet along with a deadline for return of the packet.
- If family does not return packet to the Housing Authority, a second notice will be sent for return of packet. If not returned by second notice deadline, termination proceedings will begin. (If re-examination does not coincide with HQS inspection, family must return verification/documentation requested in time period requested by staff. Second notice sent with deadline and if not returned termination proceedings will begin.)
- If family misses in home inspection, another inspection is rescheduled. If family misses the second scheduled in home inspection, termination proceedings will begin.

In some instances, families will be required to come into the office to complete an annual re-certification at the discretion of the eligibility specialist.

### **Procedure**

The HACM's procedure for conducting annual re-certifications may be processed as follows:

- Schedule the date and time of appointment and mail a notification to the family.
- If necessary and appropriate, permit the family to change the scheduled date and time appointment by telephone or in writing.
- By mail as a reasonable accommodation for elderly or disabled families.
- By mail at the discretion of the Director of Housing Programs or his or her designee.

### **Completion of Annual Recertification**

The HACM will have all re-certifications for families completed before the anniversary date. This includes notifying the family of any changes in increases of their rent change at least thirty (30)

days before the scheduled date of the change in family rent.

### **Persons with Disabilities**

Persons with disabilities who are unable to ~~come to the HACM office~~ complete the recertification paperwork by mail may be granted an accommodation by conducting the interview at the person's home, ~~or by mail depending on the circumstances~~ upon verification that the accommodation requested meets the need presented by the disability.

### **Collection of Information [24 CFR 982.516(f)]**

The HACM has established appropriate recertification procedures necessary to ensure that the income data provided by families is complete and accurate. The HACM ~~allows the family to complete~~ the will require the family to complete a Personal Declaration Form prior to all recertification interviews.

~~In the case of disabled participants or the elderly, the HACM representative may assist the family in completing the forms, records the answers, and has the family member initial the answers.~~

~~In many cases the HACM will refer those participants who do not speak English, to service agencies in the local area that will assist the families in completing the forms.~~

### **Requirements to Attend**

All adult household members will be required to attend the re-certification interview. If the head of household is unable to attend the interview, the spouse or co-head may recertify for the family, provided that the head comes in within thirty (30) days to recertify.

~~The decision as to which family members are required to attend an in house reexamination interview is left to the discretion of the eligibility specialist. The appointment will be rescheduled if the family members who have been required to attend cannot come. If cancelled the second time for failure of family members to come into the office, proceedings will begin to terminate the family.~~

### **Failure to Respond to Notification to Recertify**

**The written notification must state which family members are required to attend the interview. The family may call to request another appointment date prior to the first scheduled appointment.**

If the family does not appear for the recertification interview, and has not rescheduled or made prior arrangements with the HACM, the HACM will reschedule a second appointment.

If the family fails to appear for the second appointment, and has not rescheduled or made prior arrangements, the HACM will send the family a notice of proposed termination which gives the family an option to request an informal hearing.

**If the annual recertification letter is returned to the HACM with a forwarding address, the Eligibility Specialist will make no more than one (1) attempts to forward the appointment letter to the new forwarding address.**

Exceptions to these policies may be made by the Director of Housing Programs or his or her designee, if the family is able to document an emergency situation that prevented them from

canceled or attending the appointment or if requested as a reasonable accommodation for a person with a disability.

### Documents Required From the Family

In the notification letter to the family, the HACM will include instructions for the family to bring the following:

- Personal Declaration Form completed by head of household and **all members of 18 years of age**
- Documentation of income **or no income for all family members**
- Documentation of all assets
- Documentation of any deductions/allowances
- Documentation to support claims
- Three (3) current months of rent receipts
- Form HUD 92006
- **Medical Marijuana Form**
- **VAWA**
- ~~General Authorization Form, Federal Privacy Act Form, Statement of Family Obligations Form, Grounds for Denial or Termination by the Housing Authority Form, and Consent for Criminal Background Check Form. All must be signed by the household adults.~~
- Social Security Cards, Birth Certificates and Verification of Legal Non-Citizenship status, if applicable at annual reexamination
- ~~Childcare Expenses form and Monthly Living Expense Worksheet, if applicable~~

### Verification of Information

The HACM will follow the verification procedures and guidelines described in this Administrative Plan. Verifications for reexaminations must be less than one hundred twenty (120) days old.

*Note: If family has increase of income that is effective **before** the annual re-examination date, the income will be counted effective the annual re-examination date, regardless of the reporting date by the family. Example: Family has a June 1<sup>st</sup> annual re-examination date. They report on June 6<sup>th</sup>, which is within the reporting time period, of the increase in income that was effective before the annual reexamination date. The client will be notified in writing (Form 2) that they have fulfilled their obligation to report change and that change will be effective at their next annual re-examination unless change includes an increase or decrease in family household composition. Changes in family composition will be processed as an interim.*

### College Student Redetermination of Eligibility

Each college student within a household must provide a written/signed certification that the student does or does not anticipate receiving financial support from the student's parent(s) or guardian(s) and the amount of support.

The college student must not be claimed as a dependent by parent(s) or legal guardian(s) on the Internal Revenue Services (IRS) tax return.

Each college student receiving an athletic scholarship must provide third party verification of

amounts used towards housing costs.

The HACM must verify, via independent third-party verification, all amounts anticipated to be received outside of the family during the twelve (12) month period following admission and the effective date of the annual reexamination.

This may be achieved by requesting a copy of the college student's Form 1040EZ, 1040, or 1040A tax returns for the prior year. The HACM will check the box that asks whether the student's parents (or someone else) can claim him/her on their tax return (see box "5" for Form 1040 EZ and box "6a" for Forms 1040 and 1040A). The HACM may also, if practicable, review the college student's parents or guardians tax returns. The college student must supply any information that the HACM or HUD determines is necessary in administration of public housing, voucher, or certificate programs (24 CFR 960.259 and 982.551).

Currently, the full amount of financial assistance from federal and state grants and/or loans, academic scholarships, and work study program wages paid directly to the student or the educational institution is not included in the determination of annual or adjusted income (24 CFR 5.609 (c)(6)). Amounts paid directly to the student for living expenses will be included as income. This excludes any financial assistance received for mandatory fees and charges in addition to tuition.

#### **Tenant Rent Increase**

If the tenant rent increases, a thirty (30) day notice is mailed to the family prior to the scheduled effective date of the annual recertification.

If less than thirty (30) days are remaining before the scheduled effective date of the annual recertification, the tenant rent increase will be effective on the first of the following month.

If there has been a misrepresentation or a material omission by the family, or if the family causes a delay in the reexamination processing, there will be a retroactive increase in rent to the anniversary date, and the tenant will enter into a debt repayment agreement, and the tenant will repay the Housing Authority the money owed in rent scheduled effective date of the annual recertification.

#### **Tenant Rent Decreases**

If the tenant rent decreases, it will be effective on the first of the month following receipt of proper verification anniversary date. If the family causes a delay so that the processing of the reexamination is not complete by the effective anniversary date, rent change will be effective on the first day of the month following completion of the reexamination processing by the HACM. No back HAP payments will be issued.

### **B. REPORTING INTERIM CHANGES [24 CFR 982.516]**

Program participants must report all changes in household composition within ~~ten (10)~~ thirty (30) days to the HACM between annual reexaminations. This includes additions due to birth, adoption and court-awarded custody. The family must obtain HACM approval prior to all other additions to the household.

The HACM will not issue a larger voucher due to additions of family members other than by birth, adoption, marriage, or court-awarded custody of a current approved family member.

If any new family member is added, family income must include any income of the new family



member. The HACM will conduct a ~~interim~~ re-examination to determine such additional income and will make the appropriate adjustments in the housing assistance payment and family unit size.

The U.S. citizenship/eligible immigrant status of additional family members must be declared and verified as required at first interim or regular recertification after moving into the unit.

If the non-citizenship category of the family changes due to a member becoming a legal non-citizenship or whatever the circumstances, an annual reexamination interim will be conducted to increase or decrease the rent according to the new family category, even if income and family composition remains unchanged.

An interim reexamination does not affect the date of the annual recertification. An interim reexamination will be scheduled for families with zero or unstable income every ninety (90) days.

The HACM will review the Enterprise Income Verification (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.

Any changes reported by participants other than those listed in this section will be noted in the file and computer by the staff person but will not be processed between regularly scheduled annual recertifications.

~~Program participants must report all changes in household composition to the HACM at each occurrence. (All FSS clients must report ALL changes, including decrease of income, due to escrow accounts being affected). The family must report the changes within 10 business days to the HACM in writing by completing a change form/packet, which is available at the receptionist desk, or the form/packet can be mailed upon request. If these changes have not been reported in a timely manner, the family may owe back HAP in the form of HAP Repayment claim (Debt repayment), or be terminated from the Program, depending on the circumstances of each case. This includes additions due to birth, adoption and court ordered custody. The family must obtain HACM approval prior to all other additions to the household.~~

~~In the cases where the family is reporting the same family member in and out of the unit on a monthly, or bi-monthly basis, the HACM may have the option to consider the family member as residing in the unit, and schedule the family 90 day re-exam intervals to determine the status of the family composition.~~

### **Interim Reexamination**

#### **Increases in Income**

Families will be required to report all increases in income/assets within ~~ten (10)~~ thirty (30) days of the increase.

The HACM will not conduct interim reexaminations when families have an increase in monthly adjusted income of \$200 or less. Participants in the Family Self-Sufficiency (FSS) program are exempt from this rule as increases in income will generate a change in their escrow balance.

The HACM will review all reported increases in total household income. ~~Note: Income increases will be processed as an interim if increase is due to change in family composition.~~

~~Effective 2/1/02:~~

~~If the HACM has completed an annual reexamination, increases in total household income will be processed accordingly:~~

- ~~• Any reported increases in total annual income will NOT be considered until the next regularly scheduled examination unless there are other changes that must be considered such as: change in number of persons in the household, etc. In those cases, the change will be processed.~~
- ~~• In the cases of Family Self-Sufficiency families, only increases of income due to earned income will be processed as the packets are received.~~

~~If family fails to report increase in income as required, the HACM may consider termination and/or recoupment.~~

### **Decreases in Income**

Participants may report a decrease in income and other changes which would reduce the amount of tenant rent, such as an increase in allowances or deductions. The HACM must calculate the change if a decrease in income is reported.

Decreases in the tenant portion of the rent will be made effective the first day of the month following the month in which the change was reported, if the change was reported in writing on before the fifteenth (15<sup>th</sup>) day of the month. If reported after the fifteenth (15<sup>th</sup>) day of the month, the effective date of the tenant portion of rent may be effective on the first day of the second month after the change was reported.

### **HACM Errors**

If the HACM makes a calculation error at admission to the program or at an annual reexamination, an interim reexamination will be conducted if necessary to correct the error, but the family will not be charged retroactively. Families will be given decreases, when applicable retroactive to when the decrease for the change would have been effective if calculated correctly.

## **C. INCOME CHANGES RESULTING FROM WELFARE PROGRAM REQUIREMENTS**

The HACM will not reduce the family share of rent for families whose welfare assistance is reduced due to a specified welfare benefit reduction in benefits by the welfare agency specifically because of:

- Fraud in connection with the welfare program; or
- Failure to participate in an economic self-sufficiency program
- Noncompliance with a work activities requirement

However, the HACM will reduce the rent if the welfare assistance reduction is a result of:

- The expiration of a lifetime time limit on receiving benefits
- A situation where the family has complied with welfare program requirements but cannot

or has not obtained employment.

- The family member has complied with welfare program requirements, **but the durational time limit, such as a cap on the length of the time a family can receive benefits, causes the family to lose their welfare benefits.**

The HACM will notify affected families that they have the right to an informal hearing regarding these requirements.

### **Definition of Covered Family**

~~A household that receives benefits for welfare or public assistance from a State or public agency program which requires, as a condition of eligibility to receive assistance, the participation of a family member in an economic self-sufficiency program.~~

### **Definition of “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 included in the family’s income for purposes of determining rent.

The amount of imputed welfare income is determined by the HACM, based on written information supplied to the HACM by the welfare agency, including:

- The amount of the benefit reduction
- The term of the benefit reduction
- The reason for the reduction
- Subsequent changes in the term or amount of the benefit reduction.

The family’s annual income will include the imputed welfare income, as determined at the family’s annual or interim reexamination, during the term of the welfare benefits reduction (as specified by the welfare agency). The amount of imputed welfare income will be offset by the amount of additional income the family receives that commences after the sanction was imposed. When additional income from other sources is at least equal to the imputed welfare income, the imputed welfare income will be reduced to zero.

If the family claims the amount of imputed welfare income has been calculated incorrectly, HACM will review the calculation for accuracy. If the imputed welfare income amount is correct, the HACM will provide a written notice to the family that includes:

- A brief explanation of how the amount of imputed welfare income was determined;
- A statement that the family may request an informal hearing if they do not agree with the HACM determination.

### **Verification before Denying a Request to Reduce Rent**

The HACM will obtain written verification from the welfare agency (Merced County Human Services Agency) stating that the family’s benefits have been reduced for fraud or noncompliance *before* denying the family’s request for rent reduction. **The HACM will rely on the welfare agency’s written notice to the HACM regarding welfare sanctions.**

**The welfare agency, at the request of the HACM, will inform the HACM of the:**

- Amount and term of specified welfare benefit reduction for the family;
- Reason for the reduction; and
- Subsequent changes in term or amount of reduction.

#### **Family Dispute of Amount of Imputed Welfare Income**

If the family disputes the amount of imputed income and the HACM denies the family's request to modify the amount, the HACM will provide the tenant with a notice of denial, which will include:

- An explanation for the HACM's determination of the amount of imputed welfare income.
- A statement that the tenant may request an informal hearing.
- A statement that the information received from the welfare agency cannot be disputed at the informal hearing, and the issue to be examined at the informal hearing will be the HACM's determination of the amount of imputed welfare income, not the welfare agency's determination to sanction the welfare benefits.

#### **Cooperation Agreements [24 CFR 5.613]**

The HACM has a written cooperation agreement in place with the local welfare agency which assists the HACM in obtaining the necessary information regarding welfare sanctions.

The HACM has taken an active approach in creating an effective working relationship between the HACM and the local welfare agency for the purpose of targeting economic self-sufficiency programs throughout the community that are available to Housing Choice Voucher (HCV) participants.

The HACM and the local welfare agency have mutually agreed to exchange information regarding any economic self-sufficiency and/or other appropriate programs or services that would benefit HCV participants.

The HACM has executed a Memorandum of Understanding with the local welfare agency to ensure timely and accurate verification of noncompliance.

#### **D. DISALLOWANCE OF EARNED INCOME FROM RENT DETERMINATIONS (MEID) [24 CFR 5.616; 982.201(b) (3)]**

**EARNED INCOME DISALLOWANCE (EID) FROM RENT DETERMINATIONS [24 CFR 5.616; 982.201(b)(3)]** ~~DISALLOWANCE OF EARNED INCOME FROM RENT DETERMINATIONS FOR PERSONS WITH DISABILITIES [24 CFR 5.617; 982.201 (B)(3)]~~

The EID is designed to promote self-sufficiency for families with disabilities in the HCV program who meet the definition of a "qualified family" as described in 24 CFR 5.617 and 24 CFR 960.255. The EID benefit is limited to a lifetime 24-month period for the qualifying family member. Once a family member is determined eligible for the EID, the 24-calendar month period starts. If the family member discontinues the employment that initially qualified the family for the EID, the 24-calendar month period continues.

During the first 12-calendar month period, the HACM must exclude all increased income

resulting from the qualifying employment of the family member. After the first 12–calendar month period, the HACM must exclude from annual income of the family at least 50 percent of the increase in earned income of such family member as a result of employment over the family member’s income before the qualifying event (i.e., the family member’s baseline income). At the end of the 24 months, the EID ends regardless of how many months were “used.”

A disabled family qualified for the earned income exclusion is a family that is receiving tenant-based rental assistance under the Housing Choice Voucher Program and must meet one or more of the following conditions:

- Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;
- Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or
- Whose annual income increases, as a result of new employment or increased earnings of a family member during or within six (6) months after receiving assistance, benefits or services under any State program for TANF provided that the total amount over a six-month period is at least \$500. The qualifying TANF assistance may consist of any amount of monthly income maintenance, and/or at least \$500 in such TANF benefits and services as one-time payments, wage subsidies and transportation assistance.

The HUD definition of “previously unemployed” includes a person with disabilities who has earned in the previous twelve (12) months no more than the equivalent earnings for working ten (10) hours per week for fifty (50) weeks at the minimum wage. Minimum wage is the prevailing minimum wage in the State or locality.

The HUD definition of an economic self-sufficiency program is: any program designed to encourage, assist, train or facilitate economic independence of assisted families or to provide work for such families. Such programs may include job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as substance abuse or mental health treatment).

Amounts to be excluded are any earned income increases of a family member who is a person with disabilities during participation in an economic self-sufficiency or job training program and not increases that occur after participation, unless the training provides assistance, training or mentoring after employment.

The amount of TANF received in the six-month period includes monthly income and such benefits and services as one-time payments, wage subsidies and transportation assistance.

The amount that is subject to the disallowance is the amount of incremental increase in income of a family member who is a person with disabilities. The incremental increase in income is calculated by comparing the amount of the disabled family member’s income before the beginning of qualifying employment or increase in earned income to the amount of such income after the beginning of employment or increase in earned income.

Once a family member is determined to be eligible for the EID, the 24-calendar month period

starts;

If the family member discontinues the employment that initially qualified the family for the EID, the 24-calendar month period continues;

During the 24-calendar month period, EID benefits are recalculated based on changes to family member income and employment;

During the first 12-calendar month period, HACM will exclude all increased income resulting from the qualifying employment of the family member. After the first 12-calendar month period, HACM will exclude from annual income of the family at least 50 percent of any increase in income of such family member as a result of employment over the family member's income before the qualifying event (i.e., the family member's baseline income);

The EID benefit is limited to a lifetime 24-month period for the qualifying family member;

At the end of the 24 months, the EID ends regardless of how many months were "used".

Qualifying increases are any earned income increases of a family member who is a person with disabilities during participation in an economic self-sufficiency or job training program and not increases that occur after participation in such programs. The amount that is subject to the disallowance is the amount of incremental increase in income of a family member who is a person with disabilities. The incremental increase in income is calculated by comparing the amount of the disabled family member's income before the beginning of qualifying employment or increase in earned income to the amount of such income after the beginning of employment or increase in earned income.

#### **Applicability to Child Care and Disability Assistance Expense Deductions**

The amount deducted for child care and disability assistance expenses necessary to permit employment shall not exceed the amount of employment income that is included in annual income. Therefore, for disabled families entitled to the earned income disallowance, the amounts of the full and phase-in exclusions from income shall not be used in determining the cap for child care and disability assistance expense deductions.

#### **Tracking the Earned Income Exclusion**

The earned income exclusion will be reported on the HUD 50058 form. Documentation will be included in the family's file to show the reason for the reduced increase in rent.

Such documentation will include:

- Date the increase in earned income was reported by the family
- Name of the family member whose earned income increased
- Reason (new employment, participation in job training program, within 6 months after receiving TANF) for the increase in earned income (refer to Section B above)
- Amount of the increase in earned income (amount to be excluded)
- Date the increase in income is first excluded from annual income
- Date(s) earned income ended and resumed during the initial cumulative twelve (12) month period of exclusion (if any)
- Date the family member has received a total of twelve (12) months of the initial

- exclusion
- Date the twelve (12) month phase-in period began
- Date(s) earned income ended and resumed during the second twelve (12) month period
- (phase-in) of exclusion (if any)
- Date the family member has received a total of twelve (12) months of the phase-in exclusion
- Ending date of the maximum twenty-four (24) months, disallowance period.

The HACM will maintain a tracking system to ensure correct application of the earned income disallowance.

### **Inapplicability to Admission**

The earned income disallowance is only applied to determine the annual income of families who are participants in the Housing Choice Voucher Program, and therefore does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

### **Initial Twelve-Month Exclusion**

The annual income for qualified families may not be increased as a result of increases in earned income of a family member who is a person with disabilities beginning on the date on which the increase in earned income begins and continuing for a cumulative twelve (12) month period. After the disabled family receives twelve (12) cumulative months of the full exclusion, annual income will include a phase-in of half the earned income excluded from annual income.

If the period of increased income does not last for twelve (12) consecutive months, the disallowance period may be resumed at any time within the forty-eight (48) month period, and continued until the disallowance has been applied for a total of twelve (12) months of each disallowance (the initial twelve (12) month full exclusion and the second twelve (12) month phase-in exclusion).

During the cumulative twelve (12) month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the HACM will exclude from annual income of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over the prior income of that family member.

### **Second Twelve-Month Exclusion and Phase-in**

During the second cumulative twelve (12) month period after the expiration of the initial cumulative twelve (12) month period referred to above, the HACM must exclude from annual income of a qualified family fifty percent (50%) of any increase in income of a family member who is a person with disabilities as a result of employment over income of that family member prior to the beginning of such employment.

### **Maximum Four Year Disallowance**

The earned income disallowance is limited to a lifetime forty-eight (48) month period for each family member who is a person with disabilities. For each family member who is a person with disabilities, the disallowance only applies for a maximum of twelve (12) months of full exclusion of

incremental increase, and a maximum of twelve (12) months of phase-in exclusion during the forty-eight (48) month period starting from the date of the initial exclusion.

No earned income disallowance will be applied after the forty-eight (48) month period following the initial date the exclusion was applied.

A disabled family qualified for the earned income exclusion is a family that is receiving tenant-based rental assistance under the HCV Program and must meet one or more of the following conditions:

- Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;
- Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or
- Whose annual income increases, as a result of new employment or increased earnings of a family member during or within six (6) months after receiving assistance, benefits or services under any State program for Temporary Assistance to Needy Families (TANF) provided that the total amount over a six-month period is at least \$500. The qualifying TANF assistance may consist of any amount of monthly income maintenance, and/or at least \$500 in such TANF benefits and services as one-time payments, wage subsidies and transportation assistance.

The HUD definition of “previously unemployed” includes a person with disabilities who has earned in the previous twelve (12) months no more than the equivalent earnings for working ten (10) hours per week for fifty (50) weeks at the minimum wage. Minimum wage is the prevailing minimum wage in the State or locality.

The HUD definition of an economic self-sufficiency program is: any program designed to encourage, assist, train or facilitate economic independence of assisted families or to provide work for such families. Such programs may include job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as substance abuse or mental health treatment).

Qualifying increases are any earned income increases of a family member who is a person with disabilities during participation in an economic self-sufficiency or job training program and not increases that occur after participation ends in the program.

The amount that is subject to the disallowance is the amount of incremental increase in income of a family member who is a person with disabilities. The incremental increase in income is calculated by comparing the amount of the disabled family member’s income before the beginning of qualifying employment or increase in earned income to the amount of such income after the beginning of employment or increase in earned income.

#### **Applicability to Child Care Expense Deductions**

The amount deducted for child care necessary to permit employment shall not exceed the amount of employment income that is included in annual income. Therefore, for families entitled to the earned income disallowance, the amounts of the full and phase-in exclusions from income shall not be



used in determining the cap for child care deductions.

### **Tracking the Earned Income Exclusion**

The earned income exclusion will be reported on the HUD 50058 form. Documentation will be included in the family's file to show the reason for the reduced increase in rent.

Such documentation will include:

- Date the increase in earned income was reported by the family
- Name of the family member whose earned income increased
- Reason for the increase in earned income
- Amount of the increase in earned income (amount to be excluded)
- Date the increase in income is first excluded from annual income
- Date(s) earned income ended and resumed during the initial cumulative twelve (12) month period of exclusion (if any)
- Date the family member has received a total of twelve (12) months of the initial exclusion
- Date the twelve (12) month phase-in period began
- Date(s) earned income ended and resumed during the second cumulative twelve (12) month period (phase-in) of exclusion (if any)
- Date the family member has received a total of twelve (12) months of the phase-in exclusion
- Ending date of the maximum forty-eight (48) month, four (4) year disallowance period which is forty-eight (48) months from the date of the initial earned income disallowance

The HACM will maintain a tracking system to ensure correct application of the earned income disallowance (see Section B of this chapter, "Reporting Interim Changes" for increases in income that must be reported.

### **Inapplicability to Admission**

The earned income disallowance is only applied to determine the annual income of families who are participants in the Housing Choice Voucher Program, and therefore does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

### **Family Dispute of Amount of Imputed Welfare Income**

If the family disputes the amount of imputed income and the HACM denies the family's request to modify the amount, the HACM will provide the tenant with a notice of denial, which will include:

- An explanation for the HACM's determination of the amount of imputed welfare income
- A statement that the tenant may request an informal hearing

### **E. NOTIFICATION OF RESULTS OF REEXAMINATIONS [HUD Notice PIH-98-6]**

The HUD form 50058 will be completed and transmitted as required by HUD no later than 60 calendar days from the effective date of any action recorded on line 2b of the HUD 50058 form. The Notice of Rent Change is mailed to the owner and the tenant. Signatures are not required by the HACM on the Notice of Rent Change. If the family disagrees with the rent adjustment, they may request an informal hearing as stated on the bottom of the Notice of Rent Change.

**F. TIMELY REPORTING OF CHANGES IN INCOME (AND ASSETS) [24 CFR 982.516(c)]**  
**Standard for Timely Reporting of Changes**

The HACM requires that families report **interim** changes (in writing) in the family composition and/or income to the HACM within **thirty (30) 10-business** days of when the change occurs. Any information, document or signature needed from the family, which is needed to verify the change, must be provided upon request by the Housing Authority.

If the change is not reported (in writing) within the required time period, or if the family fails to provide documentation or signatures, it will be considered untimely reporting.

**Procedures when the Change is Reported in a Timely Manner**

The HACM will notify the family and the owner of any change in the Housing Assistance Payment to be effective according to the following guidelines:

Increases in the Tenant Rent are effective on the first of the month following at least thirty (30) days notice. **An increase in a monthly adjusted income of \$200 or less will not result in a change in the tenant's portion.**

**(Except for payment standard decrease due to family composition decrease, then a 60 day notice will be given by the HACM to the family.)**

Decreases in the Tenant Rent are effective the first of the month following that in which the change is reported, if the change was reported in writing on or before the fifteenth (15<sup>th</sup>) day of the month.

If reported after the fifteenth (15<sup>th</sup>) day of the month, the effective date of the tenant portion of rent will be effective on the first day of the second month after the change was reported. However, no rent reductions will be processed until all the facts have been verified, and no back HAP will be issued. If a tenant requests a hardship to the written notification requirement of this interim policy, the Director of Housing Programs or his or her designee may approve such request.

The change will not be made until the third party verification is received.

**If the change is reported in a timely manner at the end of the month during the time period that rent roll is closed and it would result in a decrease of the tenant rent, the Housing Authority will make every effort to collect third party verification as quickly as possible in order to process the interim on the 1<sup>st</sup> of the following month. If, however, third party verification is inaccessible, or the tenant has made no effort in providing the proper verification, the interim will take effect the month after.**

**Procedures when the Change is Not Reported by the Tenant in a Timely Manner**

If the family does not report the change as described under Timely Reporting, the family will have caused an unreasonable delay in the interim processing and the following guidelines will apply:

- Increase in Tenant Rent will be effective on the first day of the month that change would have been effective had the change been reported on a timely basis. The family will be liable for any overpaid housing assistance and **will** may be required to repay the HACM and sign a repayment agreement **or make a lump sum payment**. In some instances depending on the circumstances, the family may be terminated from the program.

- Decrease in Tenant Rent will be effective on the first of the month following the month that the change was reported, if the change was reported in writing on or before the fifteenth (15<sup>th</sup>) day of the month. If reported after the fifteenth (15<sup>th</sup>) day of the month, the effective date of the tenant portion of rent will be effective on the first day of the second month after the change was reported. If a tenant requests a hardship to the written notification requirement of this interim policy, the Director of Housing Programs or his or her designee may approve such request.

### **Procedures when the Change is Not Processed by the HACM in a Timely Manner**

"Processed in a timely manner" means that the change goes into effect on the date it should when the family reports the change in a timely manner. If the change cannot be made effective on that date, the change is not processed by the HACM in a timely manner.

In this case, an increase will be effective after the required thirty days' notice prior to the first of the month after completion of processing by the HACM.

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.

### **G. CONTINUANCE OF ASSISTANCE FOR "MIXED" FAMILIES [24 CFR 5.518]**

Under the Non-citizens Rule, "mixed" families are families that include at least one citizen or eligible immigrant and any number of ineligible members.

The non-citizens rule was implemented prior to November 29, 1996, and "mixed" families who were participants as of June 19, 1995, shall continue receiving full assistance if they meet all of the following criteria:

- The HACM implemented the Non-Citizen Rule prior to November 29, 1996; and
- The head of household or spouse is a U.S. citizen or has eligible immigrant status; and
- All members of the family other than the head, the spouse, parents of the head or the spouse, and children of the head or spouse are citizens or eligible immigrants. The family may change the head of household to qualify under this provision.

~~After November 29, 1996, for any new admissions or for families who categories change due to the admittance of a new family member, mixed families may receive prorated assistance only.~~ "Mixed" families who qualify for continued assistance after November 29, 1996, may receive prorated assistance only.

### **H. MISREPRESENTATION OF FAMILY CIRCUMSTANCES**

If any participant deliberately misrepresents the information on which eligibility or tenant rent is established, the HACM may terminate assistance and may refer the family file/record to the proper authorities for appropriate disposition.

## Chapter 13

## MOVES WITH CONTINUED ASSISTANCE/PORTABILITY [24

CFR 982.314 CFR 982.353, 982.354, 982.355(a)]

**INTRODUCTION**

HUD regulations permit families to move with continued assistance to another unit within the HACM's jurisdiction, or to a unit outside of the HACM's jurisdiction under portability procedures. The regulations also allow the HACM the discretion to develop policies, which define any limitations or restrictions on moves. This chapter defines the procedures for moves, both within and outside of, the HACM's jurisdiction, and the policies for restriction and limitations on moves.

**A. ALLOWABLE MOVES**

A family may move to a new unit with continued assistance if:

- The assisted lease for the old unit has terminated because the HACM has terminated the HAP contract for owner breach, or the lease was terminated by mutual agreement of the owner and the family.
- The owner has given the family a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the family (unless assistance to the family will be terminated).
- The family has given proper notice of lease termination (and if the family has a right to terminate the lease on notice to owner) for owner breach or otherwise.

The family has given proper notice of lease termination, and the move is needed to protect a victim who is covered under the Violence Against Women Act of 2005, subject to the victim providing the necessary documentation required of victims of this act, as described in the verification of this plan.

The HACM will consider protections to victims and/or affiliated individuals of domestic violence in accordance with VAWA 2010 and VAWA 2013.

**B. RESTRICTIONS ON MOVES [24 CFR 982.354, 982.552(a)]**

If the family or a member of the family, is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A Housing Authority may not terminate assistance if the family, with or without prior notification to the Housing Authority, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit.

Families will not be permitted to move ~~within the HACM's jurisdiction or outside the HACM's jurisdiction during the first year of their participation in the Housing Choice Voucher Program~~ during the initial year of assisted occupancy.

- ~~• Families will not be permitted to move within the HACM's jurisdiction during the initial year of assisted occupancy.~~
- ~~• Families will not be permitted to move outside the HACM's jurisdiction under portability procedures during the initial year of assisted occupancy.~~

Families will not be permitted to move more than once in a 12-month period.

The HACM will deny permission to move if there is insufficient funding for continued assistance. The HACM must provide written notification to the local HUD office within ten (10) business days of determining it is necessary to deny moves to a higher-cost unit based on insufficient funding.

The ~~Eligibility Specialist~~ Director of Housing Programs and his or her designee may make exceptions to these restrictions if there is an emergency reason for the move over which the participant has no control.

~~(See Administrative Plan Chapters on the Family Self Sufficiency Program, Family Unification Program, and Independent Living Program for further restrictions that may apply to these targeted programs.)~~

~~The HACM may deny permission to move to if:~~

Consistent with applicable civil rights laws and regulations, the HACM will deny permission to move if:

- The family ~~has violated a~~ has been issued a Notice of Proposed Termination due to a violation of any Family Obligations, Grounds for Termination, or has violated any rules and regulations under the Housing Choice Voucher Program.
- The family owes the HACM money and is in arrears or has defaulted on a repayment agreement.
- The family violates any policies and procedures set forth in this Administrative Plan.
- If the HACM determines that no subsidy would be paid at the new unit, the HACM will not enter into a HAP contract on behalf of the family.
- The family has moved or been issued a voucher within the last twelve (12) months.

## C. **PROCEDURE FOR MOVES [24 CFR 982.354]**

### **Issuance of Voucher**

Subject to the restrictions on moves and at the discretion of the HACM, if the family has not been recertified within the last one hundred twenty (120) days, the HACM will may issue the voucher to move after conducting the recertification after—and receiving the proper Intent to Vacate Notice signed by the owner and the tenant

If the family does not locate a new unit, they may remain in the current unit so long as the owner permits. ~~(However, if a Voucher family and the HACM requested the family move to a larger unit, the contract and lease will be terminated on the day the family requested to move in the Intent to~~

**Vacate Notice**

If the Voucher family was moving to a smaller unit the same applies; however, the HACM will decrease the payment standard to the correct subsidy amount upon 30-day notice to the family.

The annual recertification date will **not** be changed to coincide with the new lease-up date.

**Notice Requirements**

Briefing sessions emphasize the family's responsibility to give the owner and the HACM proper written notice of any intent to move.

The family must give the owner the required number of day's written notice of intent to vacate specified in the lease and must give a copy to the HACM simultaneously.

**Time of Contract Change**

A move within the same building or project, or between buildings owned by the same owner, will be processed like any other move except that there will be no overlapping assistance.

In a move, assistance stops at the ~~old unit effective the date of cancellation on the Intent to Vacate Notice~~ **at the end of the month in which the tenant ceased to occupy, unless proper notice was given to end a lease mid-month.** Assistance will start on the new unit on the effective date of the lease and contract. Assistance payments may overlap for the month in which the family moves.

**D. PORTABILITY [24 CFR 982.353]**

Portability applies to families moving out of or into the HACM's jurisdiction within the United States and its territories.

**E. OUTGOING PORTABILITY [24 CFR 982.353, 982.355]**

Within the limitations of the regulations and this policy, a participant family has the right to receive tenant-based voucher assistance to lease a unit outside the HACM's jurisdiction, anywhere in the United States, in the jurisdiction of a HACM with a tenant-based program. When a family requests to move outside of the HACM's jurisdiction, the request must specify the area to which the family wants to move, ~~the HACM will assist the family in contact the housing agency responsible for the specific area in which the family wants to move, if there is more than one PHA in the area in which the family has selected a unit, the HACM will chose the receiving PHA.~~

~~The initial HACM must promptly notify the receiving HACM to expect the incoming family. This means the initial HACM contacts the receiving Housing Authority on the family's behalf, typically by telephone, fax or electronic mail. Simply referring the family to HUD or a website for information on the receiving HACM's address does not fulfill the responsibilities of the initial HACM under the program regulations. The initial HACM must also advise the family how to contact and request assistance from the HACM (i.e. the name and telephone number of the staff person responsible for working with incoming portability families, and any procedures related to appointments for voucher issuance the HACM has shared with the initial HACM). The revised HUD Form 52665 now contains a line that the initial HACM uses to identify the HACM to which the initial HACM is referring the family.~~

~~If there is more than one HACM in the area in which the family has selected a unit, the family will select the receiving HACM.~~

The initial Housing Authority must not provide such portable assistance for a participant if the family has moved out of the assisted unit in violation of the lease except as provided for in this subsection. If the family moves out in violation of the lease in order to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes him or herself to be threatened with imminent harm from further violence by remaining in the dwelling unit (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move), and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the initial Housing Authority and move to another jurisdiction under the Housing Choice Voucher Program.

The portability restrictions do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR Part 5, Subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or any family member who has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

### **Receiving HACM Processing Responsibilities / Restrictions on Portability**

#### **Applicants**

If the head or spouse did not have a domicile (legal residence) in the HACM's jurisdiction at the date of their initial application for assistance, the family will not be permitted to exercise portability upon initial issuance of a voucher, unless the HACM approves such move. (NOTE: legal domicile is defined by local government.)

For a portable family that was not already receiving assistance in the HACM's tenant based program, the HACM must determine whether the family is eligible for admission under the receiving HACM's program.

#### **Participants**

After an applicant has leased-up in the jurisdiction of the initial housing agency, they cannot exercise portability during the first year of assisted occupancy, except in the following circumstances:

- The receiving and initial HACM's agree to allow the move
- The family's move relates to an opportunity for education, job training or employment

The HACM will not permit families to exercise portability for the following reasons:

- If the family is in violation of a family obligation
- If the family owes money to the HACM
- If the family has moved out of its assisted unit in violation of the lease

~~Families will not be permitted to exercise portability during the initial 12-month period after~~

admission to the program.

Upon initial issuance of a voucher the family must be income eligible under the receiving PHA income limits.

The HACM will deny permission to move if there is insufficient funding for continued assistance

#### Participants

The HACM will not permit families to exercise portability:

- If the family is in violation of a family obligation.
- If the family owes money to the HACM.
- If the family wants to move more than once within a year.
- If the family is restricted per this Administrative Plan, such as Welfare to Work, and other programs.

The HACM will deny permission to move if there is insufficient funding for continued assistance

Receiving PHA's will be required to submit hearing determinations to the HACM within 15 calendar days from the date of the hearing.

#### **F. INCOMING PORTABILITY [24 CFR 982.355] Absorption or Administration]**

The HACM will accept a family with a valid voucher from another jurisdiction and administer or absorb the voucher. HUD may determine in certain instances that a Housing Authority is not required to accept incoming portables, such as Housing Authority declared disaster area. However, the Housing Authority must have approval in writing from HUD before refusing any incoming portables. If administering, the family will be issued a "portability" voucher by the Housing Authority. The term of the voucher will not expire before the expiration date of any initial Housing Authority voucher. The family must submit a Request for Lease Approval for an eligible unit to the receiving Housing Authority during the term of the receiving Housing Authority voucher. The receiving Housing Authority may grant extensions in accordance with this Administrative Plan. However, if the family decides not to lease-up in the HACM's jurisdiction, they must contact the initial Housing Authority to request an extension.

Once the receiving Housing Authority determined, the initial Housing Authority must contact the receiving Housing Authority, via email or other confirmed delivery method, prior to approving the family's request to move in order to determine whether the voucher will be absorbed or billed by the receiving Housing Authority. The receiving Housing Authority must advise the initial Housing Authority in writing, via email, or other confirmed delivery method, of its decision. If the receiving Housing Authority notifies the initial Housing Authority that it will absorb the voucher, the receiving Housing Authority cannot reverse its decision at a later date without consent of the initial Housing Authority.

The HACM will accept a family with a valid Voucher from another jurisdiction and administer or absorb the Voucher. If administering, the family will be issued a "Portability" Voucher by the HACM with the same start date. The HACM may grant extensions in accordance with this Administrative Plan. (Not over 180 days issuance, including the initial PHA's voucher issuance date.) (Not over 180 days issuance, including the initial PHA's voucher issuance date.) The family must submit a Request for Approval of Tenancy for an eligible unit to the HACM during the term



of the HACM's voucher. However, if the Family decides not to lease up in the HACM's jurisdiction, they must contact the initial PHA to request an extension.

The HACM may absorb all incoming portable families provided that there is funding available.

When the HACM does not absorb the incoming voucher, it will administer the initial Housing Authority voucher and the receiving Housing Authority policies will prevail.

For admission to the program, a family must be income eligible in the area where the family initially leases a unit with assistance under the program.

The receiving Housing Authority does not re-determine eligibility for a portable family that was already receiving assistance in the initial Housing Authority Housing Choice Voucher Program.

The Housing Authority will issue a "portability" voucher according to its own subsidy standards. If the family has a change in family composition, which would change the voucher size, the receiving Housing Authority will change to the proper size based on its own subsidy standards. **The term of the receiving Housing Authority voucher may not expire before 30 calendar days from the expiration of the initial Housing Authority voucher. If the voucher expires before the family arrives at the receiving Housing Authority, the receiving Housing Authority must contact the initial Housing Authority to determine if it will extend the voucher. Once the receiving Housing Authority issues the portable family a voucher, the receiving Housing Authority's policies on extensions of the voucher term apply. The receiving Housing Authority must notify the initial Housing Authority of any extensions granted to the term of the voucher.**

#### **Income and Total Tenant Payment of Incoming Portables [982.353(d)]**

As the receiving HACM, the HACM will conduct a recertification interview but only verify the information provided if the documents are missing or are over one hundred twenty (120) days old, whichever is applicable, or there has been a change in the family's circumstances.

If the HACM conducts a recertification of the family, it will not cause a delay in the issuance of a voucher.

If the family's income is such that a \$0 subsidy amount is determined prior to lease-up in the HACM's jurisdiction, the HACM will refuse to enter into a contract on behalf of the family at \$0 assistance.

#### **Request for Approval of Tenancy**

A briefing will be mandatory for all portability families.

When the family submits a Request for Tenancy Approval (RFTA), it will be processed using the HACM's policies. If the family does not submit an RFTA or does not execute a lease, the initial Housing Authority will be notified within ~~21 days~~ **sixty (60) days** by the HACM.

If the family leases up successfully, the HACM will notify the initial Housing Authority within ~~sixty (60)-90 days~~-days and the billing process will commence.

**The HACM will notify the initial Housing Authority if the family fails to submit an RFTA for an eligible unit within the term of the voucher.**

If the HACM denies assistance to the family, the HACM will notify the initial HACM within ~~21~~ **sixty (60)** days and the family will be offered a review or hearing.

The HACM will notify the family of its responsibility to contact the initial Housing Authority if the family wishes to move outside the HACM's jurisdiction under continued portability.

### **Regular Program Functions**

The HACM will perform all program functions applicable to the tenant-based assistance program, such as:

- Annual reexaminations of family income and composition.
- Annual/**Biennial** inspection of the unit.
- Interim examinations when requested or deemed necessary by the HACM.

### **Terminations**

The HACM will notify the initial Housing Authority in writing of any termination of assistance within ~~10~~ **sixty (60)** days of the termination. If an informal hearing is required and is requested by the family, the hearing will be conducted by the HACM, using the regular hearing procedures included in this **Administrative** Plan. A copy of the hearing decision will be furnished to the initial Housing Authority.

The initial HACM will be responsible for collecting amounts owed by the family for claims paid and for monitoring repayment. If the initial Housing Authority notifies the HACM that the family is in arrears or the family has refused to sign a repayment agreement, the HACM will terminate assistance to the family.

**The receiving Housing Authority will be required to submit hearing determinations to the HACM within thirty (30) days.**

### **Required Documents**

As receiving **HACM Housing Authority**, the HACM will require the documents listed on the HUD portability billing form from the initial HACM:

- **A copy of the family's voucher, with issue and expiration dates, formally acknowledging the family's ability to move under portability.**
- **The most recent HUD Form 50058 and verifications of:**
  - **Current information related to eligibility including EIV printout**
  - **The administrative fee schedule for billing purposes.**
- **Form HUD-52665, Family Portability Information, Housing Choice Voucher Program.**

### **Billing Procedures**

As the receiving Housing Authority, the HACM will bill the initial HACM monthly for Housing Assistance Payments. The billing cycle for other amounts, including administrative fees and special claims, will be ~~every 10 days after submission to the financial department~~ **monthly unless requested otherwise by the initial HACM.**

The HACM will bill **one hundred percent (100%)** of the Housing Assistance Payment, one hundred percent (100%) of special claims and **the lesser of eighty percent (80%)** of the of the administrative fee ~~(at the initial HACM's rate)~~ **of the initial Housing Authority or one hundred percent (100%) of**

the receiving Housing Authority's ongoing administrative fee for each "portability" voucher leased as of the first day of the month. If administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving Housing Authority may bill.

The HACM will notify the initial Housing Authority of changes in subsidy amounts and will expect the initial Housing Authority to notify the HACM of changes in the administrative fee amount to be billed.

### **Summary of Portability Billing Deadlines**

The following summarizes the relevant deadlines under the portability billing procedures.

- Submission of Initial Billing Amount (Part II of the Form HUD 52265): The Housing Authority must submit initial billing notice:
  - No later than ten (10) working days following the date the HAP contract was executed and;
  - In the time that it will be received, no later than ninety (90) days following the expiration date of the family's voucher issued by the initial Housing Authority.
- Payment of First Billing Amount: The initial Housing Authority makes payment within thirty (30) days of receipt of Part II of the HUD Form 52265 indicating the billing amount.
- Payment of Subsequent Billing Amounts: The initial Housing Authority is responsible for ensuring that subsequent billing amounts are received no later than the fifth (5<sup>th</sup>) working day of each month for which the monthly billing amount is due.
- Notification of Change in Billing Amount or Other Action: The HACM notifies the initial Housing Authority of any change in the billing amount as soon as possible (preferably before the effective date to avoid retroactive adjustments) but under no circumstance any later than ten (10) working days following the effective date of the change.

## Chapter 14

## CONTRACT TERMINATIONS [24

## CFR 982.311(b)(c)]

**INTRODUCTION**

The Housing Assistance Payment (HAP) Contract is the contract between the owner and the HACM which defines the responsibilities of both parties. This chapter describes the circumstances under which the contract can be terminated by the HACM and the owner, and the policies and procedures for such terminations.

**A. CONTRACT TERMINATION [24 CFR 982.311]**

The term of the HAP Contract is the same as the term of the lease. The contract between the owner and the HACM may be terminated by the HACM, or by the owner or tenant terminating the lease.

No future subsidy payments on behalf of the family will be made by the HACM to the owner after the month in which the contract is terminated unless the owner has initiated an eviction process (written notice to the family) prior to the date the contract is terminated. The owner must reimburse the HACM for any subsidies paid by the HACM for any period after the contract termination date and/or eviction date.

If the family continues to occupy the unit after the Housing Assistance Payments Choice Voucher contract is terminated, the family is responsible for the total amount of rent due to the owner. The owner will have no right to claim compensation from the HACM for vacancy loss under the provisions of Certificate HAP contracts effective after October 2, 1998. (Implemented October 23, 1995 by this HACM).

After a contract termination, if the family meets the criteria for a move with continued assistance, the family may lease-up in another unit. The contract for the new unit may begin during the month in which the family moved from the old unit.

The HACM will use the "Deceased Tenant Report" in order to minimize erroneous subsidy payments on behalf of a deceased single member of a household. The HACM will immediately terminate program assistance for deceased single member households which result in termination of the HAP Contract. The owner is **not** entitled to HAP for any month following the month in which the death occurred. There are no exceptions to this policy and procedure.

**B. TERMINATION BY THE FAMILY: MOVES [24 CFR 982.314(c)(2)]**

Family termination of the lease must be in accordance with the terms of the lease.

If the family submits a 30-day written notice of their intent to vacate the unit, the contract/lease will terminate on the 30<sup>th</sup> day. If the family remains in the unit past that date, no subsidy will be issued for those days. The entire rent portion is the family's obligation if the family remains in the unit past the 30 days. (The exception to this is if the owner has submitted an eviction prior to the termination of the contract/lease.)

**C. TERMINATION OF TENANCY BY THE OWNER: EVICTIONS [24 CFR 982.310, 982.455]**

If the owner wishes to terminate the lease, ~~the owner is required under the lease, to provide proper notice as stated in the lease.~~ **the owner must provide proper notice as stated in the lease.**

~~During the term of the lease, the owner may not terminate the tenancy except for the grounds stated in the HUD regulations.~~

During the term of the lease, the owner may not terminate the tenancy except for any of the following:

~~If the owner wishes to terminate the lease on the anniversary (term) date, the owner may do so without showing cause or other good cause.~~

~~During the term of the lease, if the owner wishes to terminate the lease, the owner is required to evict, using the notice procedures in the HUD regulations and State/local law. The owner must provide the HACM with a copy of the eviction notice within 10 calendar days. The owner must provide the tenant a written notice specifying the grounds for termination of tenancy, at or before the commencement of the eviction action. The notice may be included in, or may be combined with, any owner eviction notice to the tenant.~~

~~The owner eviction notice means a notice to vacate, or a complaint, or other initial pleading used under State or local law to commence an eviction action.~~

~~During the term of the lease, or any successive term of the lease, the owner may only evict for:~~

- ~~1. Serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violations of the terms and conditions of the lease;~~
- ~~2. Violations of federal, state or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;~~
- ~~3. Other good cause~~
- ~~4. Criminal activity or alcohol abuse: The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:
 
  - ~~• Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);~~
  - ~~• Any criminal activity that threatens the health or safety or, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;~~
  - ~~• Any violent criminal activity on or near the premises; or~~
  - ~~• Any drug related criminal activity on or near the premises.~~~~
- ~~5. The owner may terminate the tenancy during the term of the lease if any member of the household 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~~
  - ~~• Violating a condition of probation or parole under Federal or State law.~~~~

6. The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

7. The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.

During initial term of the lease, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do (see 982.310).

During the initial lease term or during any extension term, other good cause includes, but is not limited to:

- Disturbance of neighbors,
- Destruction of property, or
- Living or housekeeping habits that cause damage to the unit or premises

After the initial lease term, such good cause includes, but is not limited to:

- The tenant's failure to accept the owner's offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent).

The eviction notice must specify the cause for the eviction.

The HACM requires that the owner specify the section of the lease that has been violated and cite the ways in which the tenant has violated that section as documentation for the HACM's decision regarding termination of assistance.

HAP is paid to the owner under the terms of the HAP Contract. If the owner has begun eviction and the family continues to reside in the unit, the HACM must continue to make HAP to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

The HACM will continue HAP until the family moves or is evicted from the unit, whichever comes first. The HACM may, in some instances, continue the HAP until the end of the month.

If the action is finalized in court, the owner must provide the HACM with the documentation, including notice of the lockout date.

The HACM must continue making HAP to the owner in accordance with the Contract as long as the tenant continues to occupy the unit and the Contract/lease is not violated. By endorsing the monthly check from the HACM, the owner certifies that the tenant is still in the unit, the rent is reasonable and s/he is in compliance with the contract.

However, the HACM will not continue to make payments when the owner has issued a non-renewal

of the lease or terminated the lease, even if the tenant remains in the unit past the non-renewal termination date.

If an eviction is not due to a serious or repeated violation of the lease, and if the HACM has no other grounds for termination of assistance, the HACM may issue a new voucher so that the family can move with continued assistance.

- Serious or repeated violations of the lease, including but not limited to failure to pay rent or other amounts due under the lease, or repeated violation of the terms and conditions of the lease.
- Any drug-related or criminal activity on or off the premises by a covered person that threatens the health, safety or right to peaceful enjoyment of the premises by the other residents, persons residing in the immediate vicinity of the premises, or property management personnel.
- Criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control that threatens the health, safety or right to peaceful enjoyment of the premises by the other residents, or persons residing in the immediate vicinity of the premises or any drug-related criminal activity on or near the premises.
- Any violent criminal activity by a covered person on or near the premises.
- A tenant who is a fugitive felon or parole violator.
- During the initial term of the lease, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. Other good cause, after the initial term of the lease, includes but is not limited to:
  - Tenant history of disturbance of neighbors, destruction of property, or behavior resulting in damage to the premises.
  - Business or economic reason for regaining possession
  - Owner's desire to repossess the unit for personal use
  - Tenant's refusal to accept offer of a new lease

The owner must give ninety (90) days written notice of termination and must have good cause to terminate the tenancy during the first year. The owner's notice must state the reason for termination. If after the initial term of the lease, the owner may terminate tenancy without cause. The notice may be included in, or may be combined with, any owner eviction notice to the tenant.

The owner eviction notice means a notice to vacate, or a complaint under State or local law to commence an eviction action.

During the initial term, the HACM requires that the owner specify the section of the lease that has been violated and cite some or all of the ways in which the tenant has violated that section as documentation for the HACM's decision regarding termination of assistance.

Housing Assistance Payments (HAP) are paid to the owner under the terms of the HAP Contract. If the owner has begun eviction and the family continues to reside in the unit, the HACM must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

The HACM will continue housing assistance payments until the family moves or is evicted from the unit.

If the action is finalized in court, the owner must provide the HACM with the documentation, including notice of the lock-out date.

The HACM must continue making housing assistance payments to the owner in accordance with the contract as long as the tenant continues to occupy the unit and the contract is not violated. By endorsing the monthly check from the HACM, the owner certifies that

the tenant is still in the unit, the rent is reasonable and they are in compliance with the contract.

If an eviction is not due to a serious or repeated violation of the lease, and if the HACM has no other grounds for termination of assistance, the HACM may issue a new voucher so that the family can move with continued assistance.

**Evidence of Criminal Activity [24 CFR 982.310]**

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, **regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction.**

**FROM Amendments Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking:** The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions of 24 CFR 5.105, and with the provisions for protection of victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

**Owner Discretion [24 CFR 982.310]**

In deciding whether to terminate tenancy because of criminal activity by members of the family, the owner has the discretion to consider all of the circumstances in each case, including the seriousness of the offending action. The owner may use discretion in reviewing the extent of participation or culpability of individual family members. The owner may also consider the tenant's personal attempts to mitigate the offending action and whether there is a demand for assisted housing by families who will abide by the lease.

When determining whether to terminate the tenancy for illegal drug use or alcohol abuse, the owner may consider whether the family member:

- Is no longer engaging in the illegal drug use or alcohol abuse
- Has successfully completed a supervised drug or alcohol rehab program
- Has otherwise been successfully rehabilitated

The owner may require the tenant to submit evidence of any of the three above.

The owner may impose, as a condition of continued tenancy for other family members, a requirement that family members who participated in or were culpable for the action or failure must not reside in the unit. Actions of termination by the owner must be consistent with the fair housing and equal opportunities as stated in 24 CFR 5.105.

**D. TERMINATION OF TENANCY BY THE OWNER: FORECLOSURE**

**The Protecting Tenants at Foreclosure Act (PTFA)** is a recently enacted law that amends the HAP Contract by requiring that each HAP contract include additional requirements on the owner and shall provide that during the term of the lease, the owner shall not terminate the tenancy except



for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause such as:

In the case of an owner who is an immediate successor in interest pursuant to foreclosure (during the term of the lease) and is vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the new owner if the owner:

- *Will occupy the unit as a primary residence; and*
- *Has provided the tenant a notice to vacate at least ninety (90) days before the effective date of such notice.*

Foreclosed properties where HACM voucher recipients reside must comply with Sections 702 and 703 of the PTF. If the immediate successor-in-interest or new owner will use the unit as a primary residence, the lease can be terminated effective on the date of the sale, however, the tenant is still entitled to a minimum of ninety (90) days' notice to vacate.

**E. TERMINATION OF THE CONTRACT BY HACM [24 CFR 982.404(a), 982.453, 982.454, 982.552(a)(3)]**

The term of the HAP contract terminates when the lease terminates, when the HACM terminates program assistance for the family, and when the owner has breached the HAP contract. ~~(see also "owner approval restriction Chapter for further reasons of HAP contract terminations by HACM) see this Administrative Plan).~~

The HACM will also terminate the contract if:

- ~~The HACM terminates assistance to the family.~~
- **The family is in violation of any of their family obligations.**
- The family is required to move from a unit when the unit does not meet the HQS space standards because of **an increase in family size or a change in the family composition (see subsidy standard chapter).** ~~The HACM, because of lack of housing units, will approve the family to remain in the unit as long as the family is aware of the bedroom size unit that they do qualify for and a statement to this fact is inserted in the family's file).~~
- The contract will terminate automatically if one hundred eighty (180) days have passed since the last housing assistance payment to the owner.
- **The single family member is deceased.**
- **Funding is no longer available under the Annual Contributions Contract (ACC).**

If the HACM determines that the necessary action to reduce HAP costs within the funding level is to terminate HAP contracts, it may take action to terminate the HAP contracts based on one or more of the following criteria:

- Households with a zero (\$0) HAP Contract starting with the families closest to the 180 days
- Households with a current HAP Contract less than \$100 per month
- Households whose participants have violated program requirements as evidenced by repayment agreements or signed counseling documents
- HAP contracts with gross rents that exceed the new payment standards and offer landlords new contracts under the current subsidy standards and payment standards
- Households on the program the longest with the lowest HAP

Elderly and disabled families will be excluded from the criteria referenced above for terminating HAP Contracts due to insufficient funding.

#### Notice of Termination

When the HACM terminates the HAP contract under the violation of HQS space standards, the HACM will provide the owner and family written notice of termination of the contract, ~~In the case of 24-hour Housing Quality Standard violations, which are the responsibility of the family or owner, the contract will be terminated in 24 hours.~~

~~The other exception is, of course, if the family moves without notice from the unit, or the sole member of the family becomes deceased, or the family has been absent from the unit, and the owner has not notified or was not aware of the absence.~~

and the HAP contract terminates at the end of the calendar month that follows the calendar month in which the HACM gives such notice to the owner.

#### ~~F. TERMINATION OF CONTRACTS DUE TO INSUFFICIENT FUNDING (24 CFR 982.454)~~

~~The HACM may terminate HAP contracts in accordance with HUD requirements, if the PHA determines that “funding under the consolidated ACC is insufficient to support continued assistance for families in the program.~~

~~HACM will protect the following families from cancellation. These tenants may be required to pay more in rent due to other measures, but the household will not lose their voucher.~~

~~**Elderly or disabled Voucher holders**—HACM will not cancel Vouchers for a household headed by a person who is either 62 years of age or older or who is receiving SSD/SSI. These households are particularly vulnerable because they have little prospect of ever increasing their income.~~

**Relocation Vouchers** – HACM will not cancel or delay any vouchers used to fulfill its legal obligation to relocated households that it has displaced by its own redevelopment activities.

#### ~~G. PAYMENTS TO OWNER WHEN FAMILY MOVES~~

~~The HACM will not make payments to the owner after the family has moved out of the unit, except if:~~

- ~~• The family moves before the cancellation date indicated on the Intent to Vacate Notice to the owner. The HACM will pay the owner up to the cancellation date indicated on the notice.~~
- ~~• If the family abandons the unit, it is the obligation of the owner to advise the HACM immediately. The owner keeps the full HAP until the end of the month in which the family “skips”.~~
- ~~• If the HACM has taken termination action against the family in the same month, and the termination date is before the end of the month, the HAP will end on the termination date of the family. The owner must have received at least a 30-day written notice of the termination from the HACM.~~
- ~~• If the sole member of the family becomes deceased, it is the obligation of the owner to advise the HACM immediately. The HACM will stop payment to the owner at the end of the month of the occurrence of death. If the occurrence of death occurred within the last~~

five days of the month and the owner still has not taken possession of the unit, the HACM may continue to make subsidy payments until the owner takes possession or the until the 15<sup>th</sup> of the following month, whichever comes first.

- If the family is being evicted from the unit, the HACM will continue to make payments to the owner (unless the unit is below Housing Quality Standards). The HACM will continue to make payments until the family moves from the unit, or the family is evicted, whichever comes first.
- If the family has not “skipped” from the unit, but has been absent from the unit more than 60 days, the HACM can terminate the contract immediately. The HACM will make every effort to notify the owner in advance.

The HACM will not overlap subsidy on two units, unless approved in special circumstances by the Housing Choice Voucher Director.

#### **H. TERMINATIONS DUE TO INELIGIBLE IMMIGRATION STATUS [24 CFR 5.514]**

Families who were participants on June 19, 1995, but are ineligible for continued assistance due to the ineligible immigration status of all members of the family, or because a "mixed" family chooses not to accept proration of assistance, are eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for transition to affordable housing.

Deferrals may be granted for intervals not to exceed six months, up to an aggregate maximum of:

- 3 years for deferrals granted prior to 11/29/96, or
- 18 months for deferrals granted after 11/29/96

The family will be notified in writing at least 60 days in advance of the expiration of the deferral period that termination of assistance will not be deferred because: Granting another deferral will result in an aggregate deferral period of longer than the statutory maximum (three years for deferrals granted before 11/29/96; 18 months for deferrals granted after 11/29/96), or A determination has been made that other affordable housing is available.

## Chapter 15

**DENIAL OR TERMINATION OF ASSISTANCE [24 CFR****5.903, 5.905, 982.54, 24 CFR 982.552, 982.553]****INTRODUCTION**

The HACM may deny or terminate assistance for a family because of the family's action or failure to act. The HACM will provide families with a written description of the family obligations under the program, the grounds under which the HACM can deny or terminate assistance, and the HACM's informal review/hearing procedures. This chapter describes when the HACM is required to deny or terminate assistance, and the HACM's policies for the denial of a new commitment of assistance and the grounds for termination of assistance under an outstanding existing HAP contract.

**A. TYPES OF DENIAL/TERMINATION [24 CFR 982.552, 982.553]**

If denial or termination is based upon behavior resulting from a disability, the HACM will delay the denial/termination in order to determine if there is an accommodation which would negate the behavior resulting from the disability.

**Form of Denial/Termination**

Denial of assistance for an applicant may include any or all of the following:

- Denial for placement on the HACM waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

**Mandatory Denial and Termination [24 CFR 982.552(b), 982.553]**

The HACM must deny assistance to applicants, and terminate assistance for participants:

- If any member of the family fails to sign and submit HUD or HACM required consent forms for obtaining information.
- If no member of the family is a U.S. citizen or eligible immigrant.
- If the family is under contract and 180 days have elapsed since the HACM's last housing assistance payment was made.
- If the family is evicted from housing assisted under the program for serious violation of the lease.
- If any household member is subject to a lifetime registration requirement under a State sex offender registration program
- If any household member has been convicted of manufacturing or producing methamphetamine.

- If a student applying for or participating in the HCV Program separately from his/her parents, is a student enrolled in an institution of higher education AND is under the age of 24, not a veteran, unmarried, and does not have any dependent children, the student will be denied (if an applicant) or terminated (if a current HCV participant) if his/her income, with his/her parent's joint income do not meet the income requirements for admission to the HCV Program.

Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease.
- Terminating housing assistance payments under an outstanding HAP contract.
- Refusing to process or provide assistance under portability procedures.

#### **Grounds for Denial of Assistance [24 CFR 982.552]**

*Note: The family may be permanently prohibited from admission to the Housing Choice Voucher Program if they were previous participants in the Program or any federally assisted housing and were terminated for any reason. An exception may be granted by the HACM, based on all the information presented, on a case by case basis*

- The Family must have not have violated any family obligation during a previous participation in the Housing Choice Voucher Program. [24 CFR 982.551]
- If any member of the family has ever been evicted from federally assisted housing.
- If a housing authority has ever terminated assistance under the Certificate or Voucher Program for any member of the family.
- The Family must have paid any outstanding debts owed the HACM or other housing authority or amounts paid to the owner by a housing authority as a result of prior participation in any federal housing program. The family will be required to pay the balance in full prior to final eligibility determination, but not before being placed on the waiting list. If the debt is not paid in the designated time period set by the HACM during the eligibility process, the application will be withdrawn. The family must submit a new application. In no case will the debt be forgiven.
- If any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- If any family member has engaged in or threatened abusive or violent behavior towards HACM personnel.
- Abusive or violent behavior towards HACM personnel includes, but is not limited to, verbal as well physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult, harass, or intimidate, may be cause for termination or denial.
- Threatening, includes but is not limited to, oral or written threats or suggestions, or physical gestures that communicate intent to abuse or commit violence.
- Actual physical abuse or violence will always be cause for termination.
- The family's action or failure to act.
- If any member of the family fails to sign and submit consent forms for obtaining information.
- If any member of the family does not submit required evidence of citizenship or eligibility immigration status, or if there is no eligible member of the family.

- If any household member is currently or has engaged in drug related criminal activity or violent criminal activity within a minimum of the past *five years* from the date of occurrence. HACM may consider extenuating circumstances in appropriate cases. (Minimum five year time period is only for new admissions and does not pertain to family members who were terminated from the program due to drug related or violent criminal activity, or other criminal activity. That may be a permanent prohibited admission to the program.)
- If any household member is currently engaged in or has engaged in other criminal activity which may threaten the health or safety of the premises by, other residents, or persons residing in the immediate vicinity or which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the HACM, including a HACM employee, contract or subcontractor or agent.
- If any household member is subject to a lifetime registration requirement under a State sex offender registration program, they are permanently prohibited from admission to the Housing Choice Voucher Program.
- If any household member has been convicted of manufacturing or producing methamphetamine in a building or complex assisted under the public housing or Housing Choice Voucher Programs, they are permanently prohibited admission to the Housing Choice Voucher Program.
- If any household member has an abuse or pattern of abuse of alcohol that may adversely affect the health or safety of, or the right to peaceful enjoyment of the premises by, other residents and persons residing in the immediate vicinity of the premises or if the HACM believes it has reasonable cause to believe the family member has in the past (minimum) *five years* a criminal record that substantiates the pattern of abuse of alcohol.
- If any household member 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 violating a condition of probation or parole imposed under Federal or State law, provided owner evicts on this basis.

The HACM may waive the minimum *five year time period requirement* for drug related or violent criminal activity or other criminal activity if:

- The circumstances leading to the eviction or termination no longer exist. For example, the individual involved in drugs is no longer in the household because the person is incarcerated; or
- If the person engaging in the activity has successfully completed a supervised drug or alcohol rehabilitation program; or
- Has otherwise been rehabilitated successfully; or
- Is participating in a supervised drug or alcohol rehabilitation program.
- If the violating member is a minor, the HACM may consider individual circumstances with the advice of the Juvenile Court officials.

#### **Grounds for Termination of Assistance [24 CFR 982.552(a)(1); 982.552(c)(1)(i-ix)]**

- The family is under contract and 180 days (or 12 months, depending on the HAP contract used) have elapsed since the HACM's last housing assistance payment was made.
- The family violates any family obligation under the program as listed in 24 CFR 982.551.
- Any member of the family has ever been evicted from federally assisted housing.

- If a housing authority has ever terminated assistance under the Certificate or Voucher program for any member of the family.
- If any member of the family commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to the HACM or to another housing authority in connection with Housing Choice Voucher or public housing assistance under the 1937 Act.
- The family has not reimbursed any housing authority for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, including a HAP repayment to a housing authority for underreporting income or other circumstances.
- The family breaches an agreement with a housing authority to pay amounts owed to a housing authority, or amounts paid to an owner by a housing authority.
- The family has engaged in or threatened abusive or violent behavior toward HACM personnel. (See definitions under Denial of Assistance listed above)
- **Participants will be permanently terminated if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program.**
- Family fails to provide evidence of citizenship or eligible immigration status.
- There is no eligible family member under the non-citizenship rule and the time period has elapsed of 18 months.
- Any member of the family fails to sign and submit consent forms.
- If the Family fails to comply with the Welfare to Work Program.
- If any member of the family commits drug related criminal activity, or violent criminal activity.
- 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. (Permanently prohibited from admission to any federally assisted program)
- If any household member 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, provided owner evicts on this basis.
- If any household member violates a condition of probation or parole imposed under Federal or State law, provided owner evicts on this basis.
- If any household member is currently or has engaged in other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the residents and persons residing in the immediate vicinity of the premises or which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the HACM, including a HACM employee, contract or subcontractor or agent.
- If any household member abuses alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises or if the HACM believes it has reasonable cause to believe the family member has in the past five years a criminal record that substantiates the pattern of abuse of alcohol.
- If any household is evicted from housing assisted under the program for serious violation of the lease.
- 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, they are terminated and permanently denied admission to the program.
- If any family member has engaged in or threatened abusive or violent behavior towards HACM personnel.

- Abusive or violent behavior towards HACM personnel includes, but is not limited to, verbal as well physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult, harass, or intimidate, may be cause for termination or denial.
- Threatening includes but is not limited to, oral or written threats or suggestions, or physical gestures that communicate intent to abuse or commit violence.
- Actual physical abuse or violence will always be cause for termination.

The HACM may take into consideration the following factors in deciding whether to terminate a participant in the program due to drugs, alcohol, or criminal activity if:

- The circumstances leading to the eviction or termination no longer exist. For example, the individual involved in drugs is no longer in the household because the person is incarcerated; or
- If the person engaging in the activity has successfully completed a supervised drug or alcohol rehabilitation program; or
- Has otherwise been rehabilitated successfully; or
- Is participating in a supervised drug or alcohol rehabilitation program.
- If the violating member is a minor, the HACM may consider individual circumstances with the advice of Juvenile Court officials.

In denying or terminating assistance, the HACM may terminate assistance for drug related, violent, or other criminal activity by a household member under this section if the HACM has determined that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

Families with drug related or criminal activity older than five years will be considered on a case-by-case basis for admission and termination of assistance.

## **B. PURPOSE AND POLICY**

All federally assisted housing is intended to provide a place to live and raise families, not a place to commit crime, to use or sell drugs or terrorize and/or harass neighbors. It is the intention of the HACM to fully endorse and implement a policy, which is designed to:

- Help create and maintain a safe and drug free community
- Keep our program participants free from threats to their personal and family safety
- Support parental efforts to instill values of personal responsibility and hard work
- Help maintain an environment where children can live safely, learn and grow up to be productive citizens
- Assist families in their vocational/educational goals in the pursuit of self sufficiency

### **Administration**

All screening and termination procedures shall be administered fairly and in such a way as not to violate rights to privacy or discriminate on the basis of race, color, religion, sex, national origin, age, familial or marital status, disability, sexual orientation and gender identity.

To the maximum extent possible, the HACM will involve other community and governmental entities in the promotion and enforcement of this policy.

The fact that an applicant or tenant was arrested for a disqualifying offense shall not be treated or regarded as proof that the applicant or tenant engaged in disqualifying criminal activity. The arrest



may, however, trigger an investigation to determine whether the applicant or tenant actually engaged in disqualifying criminal activity. As part of its investigation, HACM may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The HACM may also consider any statements made by witnesses or the applicant or tenant not included in the police report; whether criminal charges were filed; whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal; and any other evidence relevant to determine whether or not the applicant or tenant engaged in disqualifying activity.

### **Screening of Applicants**

In an effort to prevent future drug related, violent and other criminal activity, as well as other patterns of behavior that pose a threat to the health, safety or right to peaceful enjoyment of the premises by other residents, and as required by the Notice 96-27, the HACM will endeavor to screen applicants as thoroughly and fairly as possible.

Such screening of new admissions will apply to any member of the household who is 18 years of age or older or who is an emancipated minor, including a live in aide. Criminal background checks will also be conducted on any adult being added to a participant's family composition, including a live in aide.

All adult members of families porting into the HACM's jurisdiction will be screened for criminal background history.

Any violations as stated in the above paragraphs will be grounds for termination/denial of admission.

### **HUD Definitions**

*Covered person*, for purposes of 24 CFR Part 982 and this chapter, 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* is the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance. Drug related criminal activity means *on or off the premises, not just on or near the premises.*

*Premises* is defined as the building or complex in which the dwelling unit is located, including common areas and grounds. (Federal Register 2/18/99 QHWRA Initial Guidance)

*Guest*, for purposes of this chapter and 24 CFR Part 5, subpart A and 24 CFR Part 982, 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. The requirements of part 982 apply to a guest so defined.

*Household*, for the purposes of 24 CFR Part 982 and this chapter, means the family and PHA-approved live in aide.

*Other person under the tenant's control*, for the purposes of the definition of *covered person* and for 24 CFR Parts 5 and 982 and for this chapter, means that the person, although not staying as a guest (as defined in this chapter) 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*.

*Violent criminal activity* includes any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against a person or property, and the activity is being engaged in by any family member, which could include a live-in aide.

*Other criminal activity* includes criminal activity, which may threaten the health or safety of the owner, property management staff, HACM employee, residents of the premises, or persons residing in the immediate vicinity of the premises.

### **Standard for Violation**

The HACM will deny participation in the program to applicants and terminate assistance to participants in cases where the HACM determines there is reasonable cause to believe that the person (person also can include a live-in aide) is either illegally using a controlled substance, or if the person abuses/abused alcohol, or engages/engaged in violent criminal activity, or commits/committed any other criminal activity that may interfere with the health, safety or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises), or by persons residing in the immediate vicinity of the premises.

*"Engaged in or engaging in"* violent criminal activity means any act by applicants or participants, household members, or guests which involves criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person of another, which did or did not result in the arrest and/or conviction of the applicant or participant, household members, guests, or live-in aide.

*Under the Violence Against Women Act of 2005 (VAWA) statutes, the abusers criminal activity directly related to abuse and beyond control of the victim shall not be grounds for termination. The amendments clarify that the HACM may terminate a VAWA victim if the individual is an actual and imminent threat to other tenants or community. Also if the victim is evicted for unrelated criminal activity, this may be grounds for termination of the HCV assistance, provided the HACM does not hold the victim to a more demanding standard than other program participants. In more general terms, nothing prevents a victim who has committed a crime or violated a lease from being terminated from the HCV Program.*

### **Housing Authority Discretion**

In deciding whether to deny or terminate assistance because of action or failure to act by members of the family, the HACM has discretion to consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, the length of time since the violation occurred and more recent record of compliance, and the effects of denial or termination of assistance on other family members who were not involved in the action

or failure to act.

The HACM may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The HACM may permit the other members of a family to continue in the program.

The HACM will apply regulations identified in "Protection for Victims of Domestic Violence, Dating Violence, or Stalking" in all applicable cases that involve an incidence of, or criminal activity related to, domestic violence, dating violence, or stalking.

### **Tenant Selection**

The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR Part 5, Subpart L, apply to admission to the project based program.

### **Family Right to Move**

The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR Part 5, Subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar day period preceding the family's request to move. A Housing Authority may not terminate assistance if the family, with or without prior notification to the Housing Authority, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar day period preceding the family's request to move.

If a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, the PHA may offer the victim the opportunity for continued tenant-based rental assistance.

### **Notice of Termination of Assistance**

In any case where the HACM decides to terminate assistance to the family, the HACM must give the family written notice which states the reason(s) for the proposed termination:

- The effective date of the proposed termination;
- The family's right, if they disagree, to request an Informal Hearing to be held before termination of assistance.
- The date by which a request for an informal hearing must be received by the HACM.

The HACM will simultaneously provide written notice of the contract termination to the owner so that it will coincide with the Termination of Assistance. The Notice to the owner will not include any details regarding the reason for termination of assistance.

**Required Evidence**

*Preponderance of 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. The intent is not to prove criminal liability, but to establish that the act(s) occurred. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence. The HACM may deny or terminate assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

*Credible evidence* may be obtained from police and/or court records. Testimony from neighbors, when combined with other factual evidence can be considered credible evidence. Other credible evidence includes documentation of drug raids or arrest warrants.

- The HACM may pursue fact finding efforts as needed to obtain credible evidence; however, the HACM may deny or terminate assistance based only on preponderance of evidence as stated above.

**Domicile (Primary Residence/Legal Residence)**

Domicile is defined as a family's legal place of residence. — It is the location where an individual or individuals claim their residence of first choice and spend a significant amount of their time residing at that location and caring about their affairs through that location. Domicile may be established by at least two of the following documents:

1. An individual receiving correspondence at that address;
2. An individual having a vehicle or vehicles registered with that address;
3. An individual listing the residence address on their driver's license or other personal identification cards or listings;
4. An individual listing the residence in connection with any employment of that individual;
5. An individual whose name is listed at the residences addressed for purposes of utility bills or other services provided at that residence address;
6. An individual who uses the residence address to register to vote;
7. Attendance of dependents at a primary or secondary school;
8. Filing a homeowner's property tax exemption;
9. Renting or leasing a home for use as a residence;
10. Recent marriage or divorce records issued in California;
11. Recent California court documents showing an address; or
12. Police records from a California law enforcement agency.

Documents *not acceptable* as verification of residency are:

A declaration or an affidavit can only be used in support with at least two of the above verifications.

Domicile residence can also be established on the basis that an individual is observed, on a frequent basis departing from and returning to the residence. Domicile residence can further be established if an individual has resided at the residence in the capacity of a guest or visitor for a majority of any two week period of time, or a total of thirty (30) days in a 12 month period.

**Confidentiality of Criminal Records**

The HACM will ensure that any criminal record received is maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which it was requested is accomplished.

Misuse of the above information by any employee will be grounds for discipline up to and including termination of employment.

**C. FAMILY OBLIGATIONS [24 CFR 982.551]**

1. The family must supply any information that the HACM or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR 982.551). "Information" includes any requested certification, release or other documentation.
2. The family must supply any information requested by the HACM or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.
3. The family must disclose and verify Social Security Numbers (as provided by 24 CFR part 5.216 and must sign and submit consent forms for obtaining information in accordance with 24 CFR 5.230.
4. All information supplied by the family must be true and complete.
5. The family is responsible for an HQS breach caused by the family as described in 982.404(b).
6. The family must allow the HACM to inspect the unit at reasonable times and after reasonable notice.
7. The family may not commit any serious or repeated violations of the lease.
8. The family must notify the owner and, at the same time, notify the HACM before the family moves out of the unit or terminates the lease upon notice to the owner.
9. The family must promptly give the HACM a copy of any owner eviction notice.
10. The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
11. The composition of the assisted family residing in the unit must be approved by the HACM. The family must promptly inform the HACM of the birth, adoption or court ordered custody of a child. The family must request HACM approval *prior* to adding any other family member as an occupant of the unit.
12. The family must promptly notify the HACM if any family member no longer resides in the unit.
13. If the HACM has given approval, a foster child or a live in aide may reside in the unit. If the family does not request approval or HACM approval is denied, the family may not allow a foster child or live in aide to reside with the assisted family.
14. Members of the household may engage in legal profit making activities in the unit, but only if

such activities are incidental to primary use of the unit as a residence by members of the family.

15. The family must not sublease or let the unit.
16. The family must not assign the lease or transfer the unit.
17. The family must supply any information or certification requested by the HACM to verify that the family is living in the unit, or relating to family absence from the unit, including any HACM requested information or certification on the purposes of family absences. The family must cooperate with the HACM for this purpose. The family must promptly notify the HACM of absence from the unit.
18. The family must not own or have any interest in the unit.
19. The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.
20. The members of the household may not engage in drug related criminal activity, or violent criminal activity. The members of the household may not engage in other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises or which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent). (See 24 CFR 982.553)
21. The members of the household must not abuse alcohol in a way that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.
22. An assisted family, or members of the family, may not receive Housing Choice Voucher tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) Federal, State or local housing assistance program.

### **Enforcing Family Obligations**

#### **Explanations and Terms**

The term "Promptly" when used with the Family Obligations always means "within 10 business days." Denial or termination of assistance is always at the discretion of HACM except where this Plan or the regulations state otherwise.

#### **HQS Breach**

The inspector will determine if an HQS breach as identified in 24 CFR 982.404 (b) is the responsibility of the family. Families may be given extensions to cure HQS breaches.

### **Lease Violations**

The following criteria can be used to decide if a serious or repeated violation of the lease will result in termination of assistance:

- If the owner terminates tenancy through court action for serious or repeated violation of the lease, or

- If the owner notifies the family of termination of tenancy assistance for serious or repeated lease violations, and the family moves from the unit prior to the completion of court action, and the HACM determines that the cause is a serious or repeated violation of the lease based on available evidence, or
- If the owner notifies the family of termination of tenancy assistance for serious or repeated lease violations, and the family moves from the unit prior to the completion of court action, or
- If there are police reports, neighborhood complaints or other third party information, that has been verified by the HACM, including inspection/s of the unit by the HACM.

#### ***Notification of Eviction***

If the family requests assistance to move and they did not notify the HACM of an eviction within 5 days of receiving the Notice of Lease Termination, the move will be denied, and action may be taken by the HACM to terminate assistance to the family based on violation of family obligations.

#### ***Proposed Additions to the Family***

The HACM may deny a family's request to add additional family members if any of the members violate any of the grounds for denial of assistance listed in this chapter, including being part of a family who has been evicted from any public housing unit or terminated from any Housing Choice Voucher Program, or any Federal housing program.

#### **Limitation on Profit-making Activity in Unit**

If the business activity area results in the inability of the family to use any of the critical living areas, such as a bedroom utilized for a business, which is not available for sleeping, it will be considered a program violation.

If the HACM determines that the use of the unit as a business is not incidental to its use as a dwelling unit, it will be considered a program violation.

If the HACM determines the business is not legal, it will be considered a program violation.

#### **Interest in Unit**

The owner may not reside in the assisted unit. The only exception to this is if the unit is a "shared housing" unit and the owner resides in the unit, and does not receive subsidy. The owner may not, however, even in shared housing, be a relative of any participants in the program who are his/her tenants as defined in the Federal regulations and set forth in this Administrative Plan.

#### **Fraud**

In each case, the HACM will consider which family members were involved, the circumstances, and any hardship that might be caused to innocent members.

\* In the event of false citizenship claims: (Refer to Section D.)

**D. PROCEDURES FOR NON-CITIZENS [24 CFR 5.514, 5.516, 5.518]****Denial or Termination due to Ineligible Immigrant Status**

Applicant or participant families in which all members are neither U.S. citizens nor eligible immigrants are not eligible for assistance and must have their assistance terminated. The HACM must offer the family an opportunity for a hearing. (See Eligibility for Admission Chapter, section on Citizenship/Eligible Immigration Status.)

Assistance may not be terminated while verification of the participant family's eligible immigration status is pending.

**False or Incomplete Information**

When the HACM has clear, concrete, or substantial documentation (such as a permanent resident card or information from another agency) that contradicts the declaration of citizenship made by an applicant or participant, an investigation will be conducted and the individual given an opportunity to present relevant information.

**If the individual is unable to verify their citizenship, the HACM shall not give him/her an opportunity to provide a new declaration as an eligible immigrant or to elect not to contend their status.**

**The HACM will then verify eligible status, deny, terminate, or prorate as applicable.**

The HACM will deny or terminate assistance based on the submission of false information or misrepresentation.

**Procedure for Denial or Termination**

If the family (or any member) claimed eligible immigrant status and the INS primary and secondary verifications failed to document the status, the family may make an appeal to the INS and request a hearing with the HACM either after the INS appeal or in lieu of the INS appeal.

After the HACM has made a determination of ineligibility, the family will be notified of the determination and the reasons and informed of the option for prorated assistance (if applicable).

**E. ZERO (\$0) ASSISTANCE TENANTS HAP Contracts On or After 10/2/95 [24 CFR 982.455 (a)]**

For contracts effective on or after 10/2/95, the HACM has no liability for unpaid rent or damages, and the family may remain in the unit at \$0 assistance for up to 180 days after the last HAP payment. If the family is still in the unit after 180 days, the assistance will be terminated. If, within the 180-day timeframe, an owner rent increase or a decrease in the Total Tenant Payment causes the family to be eligible for a housing assistance payment, the HACM will resume assistance payments for the family.

In order for a family to move to another unit during the 180 days, the rent for the new unit would have to be high enough to necessitate a housing assistance payment.



**F. ~~OPTION NOT TO TERMINATE FOR MISREPRESENTATION [24 CFR 982.551, 982.552(c)]~~**

~~If the family has misrepresented any facts that caused the HACM to overpay assistance, the HACM may choose not to terminate and may offer to continue assistance provided that the family executes a Repayment Agreement and makes payments in accordance with the agreement or reimburses the HACM in full.~~

**G. ~~MISREPRESENTATION IN COLLUSION WITH OWNER [24 CFR 982.551, 982.552 (c)]~~**

~~If the family intentionally, willingly, and knowingly commits fraud or is involved in any other illegal scheme with the owner, the HACM will deny or terminate assistance.~~

~~In making this determination, the HACM will carefully consider the possibility of overt or implied intimidation of the family by the owner and the family's understanding of the events.~~

~~Owner will also be permanently terminated from the Housing Choice Voucher program.~~

**H. ~~MISSED APPOINTMENTS AND DEADLINES [24 CFR 982.551, 982.552 (c)]~~**

~~It is a Family Obligation to supply information, documentation, and certification as needed for the HACM to fulfill its responsibilities. The HACM schedules appointments and sets deadlines in order to obtain the required information. The Obligations also require that the family allow the HACM to inspect the unit, and appointments are made for this purpose.~~

~~An applicant or participant who fails to keep an appointment, or to supply information required by a deadline without notifying the HACM, may be sent a Notice of Denial or Termination of Assistance for failure to provide required information, failing to keep an appointment, or for failure to allow the HACM to inspect the unit.~~

~~The family will be given information about the requirement to keep appointments and the number of times appointments will be rescheduled, as specified in this Plan.~~

~~Appointments will be scheduled and time requirements will be imposed for the following events and circumstances:~~

- ~~• Eligibility for Admissions (Includes Income Targeting Letters, Pickup and Return of Eligibility Packets, Attending Eligibility Appointments/Interviews)~~
- ~~• Verification Procedures~~
- ~~• Certificate/Voucher Issuance and Briefings~~
- ~~• Housing Quality Standards and Inspections~~
- ~~• Recertifications~~
- ~~• Appeals (Reviews and Hearings)~~
- ~~• Scheduled Meetings with HACM staff~~
- ~~• Housekeeping Classes~~
- ~~• Required before Voucher issuance. Required during tenancy, if failed housekeeping on annual inspection report.~~
- ~~• Failure to attend will result in the family being ineligible for the HCV Program for three years.~~

~~Any Classes and Meetings scheduled by Central Valley Coalition for Affordable Housing under the Family Self-Sufficiency Program or Housing Search Assistance Program.~~

Acceptable reasons for missing appointments or failing to provide information by deadlines are:

- Medical emergency
- Family emergency

### **DENIAL OF VOUCHER**

*Note: If client denied voucher due to not attending the HSAP Housekeeping Class or any other class deemed mandatory by HSAP OR not attending the Voucher Briefing, then the family is denied admittance to the Program for a minimum of three years from the date of denial.*

#### **Procedure when Appointments are Missed or Information not Provided**

For most purposes in this Plan, the family will be given two opportunities before being issued a notice of termination or denial for breach of a family obligation, except for Informal Reviews/Hearings, Briefings of New Admissions, Including Mini Briefings and Briefings for Portables transferring to this jurisdiction. In these cases the family is given one opportunity to attend the scheduled meeting.

A client/applicant who is 15 minutes late or more will be scheduled a second appointment. If the family misses the second appointment, the family will be terminated from the program.

If the client calls to cancel the appointment, before the time of the appointment, the Eligibility Specialist will have the discretion to deny a new appointment time for the client depending on the circumstances of the missed appointment. The HACM may require verification of the reason for the missed appointment.

After issuance of the termination notice, if the family offers to correct the breach within the time allowed to request a hearing, the notice may be rescinded at the discretion of HACM. These rescinded actions may include terminations due to non-payment of debt owed to the HACM and family brings the amount owed current. In those instances, the termination will proceed even if the family brings the amount current, if they have had a history of non-compliance with the program, such as previous termination notices, history of past due amounts owed, inaction to schedule meeting with worker to re-sign debt agreement, etc.

### **FAMILY OBLIGATIONS [24 CFR 982.551]**

1. The family must supply any information that the HACM or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR 982.551). "Information" includes any requested certification, release or other documentation.
2. The family must supply any information requested by the HACM or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.
3. The family must disclose and verify Social Security Numbers (in accordance with 24 CFR 5.216) and must sign and submit consent forms for obtaining information in accordance with 24 CFR 5.230.
4. All information supplied by the family must be true and complete.

5. The family is responsible for an HQS breach caused by the family in accordance with 24 CFR 982.404(b).
6. The family must allow the HACM to inspect the unit at reasonable times and after reasonable notice.
7. The family may not commit any serious or repeated violations of the lease.
8. The family must notify the owner and, at the same time, notify the HACM before the family moves out of the unit or terminates the lease upon notice to the owner.
9. The family must promptly give the HACM a copy of any owner eviction notice.
10. The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
11. The composition of the assisted family residing in the unit must be approved by the HACM. The family must promptly inform the HACM of the birth, adoption or court-awarded custody of a child. The family must request Housing Authority approval to add any other family member as an occupant of the unit.

The HACM may approve additional family members in the following cases:

- The spouse or partner of the Head of Household (HOH). For a spouse, a marriage license must be provided at the time request.
  - The minor children of the approved spouse or approved domestic partner of the HOH.
  - The disabled elderly parent(s) or grandparent(s) of the HOH, approved spouse or approved domestic partner.
12. The family must promptly notify the HACM if any family member no longer resides in the unit.
  13. If the HACM has given approval, a foster child or a live-in aide may reside in the unit. If the family does not request approval or HACM approval is denied, the family may not allow a foster child or live-in aide to reside with the assisted family.
  14. Members of the household may engage in legal profit-making activities in the unit, but only if such activities are incidental to primary use of the unit as a residence by members of the family.
  15. The family must not sublease or let the unit.
  16. The family must not assign the lease or transfer the unit.
  17. The family must supply any information or certification requested by the HACM to verify that the family is living in the unit, or relating to family absence from the unit, including any HACM requested information or certification for the purpose of family absences. The family must cooperate with the HACM for this purpose. The family must promptly notify the HACM of absence from the unit.
  18. The family must not own or have any interest in the unit except families participating in the Homeownership Option Program (HOP).
  19. The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with any Federal housing programs.
  20. The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.
  21. The household members may not engage in drug-related criminal activity or other violent criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.
  22. An assisted family, or members of the family, may not receive Housing Choice Voucher tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) Federal, State or local housing assistance program.
  23. The members of the family must not engage in threatening, abusive, or violent behavior toward HACM personnel.

**I. GROUNDS FOR DENIAL/TERMINATION [24 CFR 982.552, 982.553]**

If denial or termination is based upon behavior resulting from a disability, the HACM will delay the denial or termination in order to determine if there is an accommodation, which would negate the behavior resulting from the disability.

**Form of Denial/Termination**

Denial of assistance for an applicant may include any or all of the following:

- Denial for placement on the HACM waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an existing HAP contract
- Refusing to process or provide assistance under portability procedures

**Mandatory Denial of Assistance [24 CFR 982.54(d), 982.552(b), 982.553(a), and 982.553(b)]**

The HACM must deny assistance to applicants:

- If any member of the family fails to sign and submit HUD or HACM required consent forms for obtaining information in accordance with 24 CFR Part 5, Subparts B and F.
- If no member of the family is a U.S. citizen or eligible immigrant (see “Procedures for Non-Citizens” in this chapter).
- If any member of the family has been evicted from federally assisted housing for drug-related criminal activity, the HACM must deny admission for five (5) years after the eviction occurred, unless the household member completed an approved, supervised drug rehabilitation program or the circumstances for the eviction no longer exist.
- If any member of the family is currently engaging in illegal use of a drug or the HACM determines that the use or pattern of use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
- If any member of the family’s abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
- If any member of the family has ever been convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing.
- If any member of the family is subject to a lifetime registration requirement under a State sex offender registration program (see “Denial of Assistance for Sex Offenders” later in this chapter).

**Mandatory Termination of Assistance [24 CFR 982.54(d), 982.552(b), 982.553(a), and 982.553(b)]**

The HACM must terminate assistance for participants:

- If any member of the family fails to sign and submit HUD or HACM required consent forms for obtaining information in accordance with 24 CFR Part 5, Subparts B and F.
- If no member of the family is a U.S. citizen or eligible immigrant (see “Procedures for Non-Citizens” in this chapter).

- If any member of the family is currently engaging in illegal use of a drug or the HACM determines that the use or pattern of use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
- If any member of the family's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
- If the family is under contract and one hundred eighty (180) days have elapsed since the HACM's last housing assistance payment was made (see Chapter 14, "Contract Terminations" of this Administrative Plan).
- If the family is evicted from housing assisted under the program for serious and repeated violations of the lease.
- If any member of the family is or has ever been convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing.
- If any member of the family is subject to a lifetime registration requirement under a State sex offender registration program (see "Denial of Assistance for Sex Offenders" later in this chapter).
- If any member of the family does not meet the applicable Social Security number SSN disclosure, documentation and verification requirements. This rule does not apply to 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.

#### **Grounds for Denial or Termination of Assistance [24 CFR 982.552(c)]**

The HACM will deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following reasons:

- The family violates any family obligation under the program as listed in 24 CFR 982.551.
- Any member of the family has ever been evicted from public housing in the last five (5) years.
- If any HACM has ever terminated assistance under the program for any member of the family.
- If any member of the family commits fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program.
- The family currently owes rent or other amounts to the HACM or to another Housing Authority in connection with the Housing Choice Voucher Program or public housing assistance under the 1937 Act.
- The family has not reimbursed any Housing Authority for amounts paid to an owner under a HAP contract for rent, or other amounts owed by the family under the lease.
- The family breaches an agreement with a Housing Authority to pay amounts owed to a Housing Authority, or amounts paid to an owner by a Housing Authority. The Housing Authority at its discretion may offer the family the opportunity to enter into a repayment agreement. The Housing Authority will prescribe the terms of the agreement (see Chapter 18, "Owner or Family Debts to the HACM" of this Administrative Plan).
- The family participating in a Family Self-Sufficiency (FSS) program fails to comply, without good cause, with the family's FSS Contract of Participation (COP).
- The family has engaged in or threatened abusive or violent behavior toward HACM personnel. Abusive or violent behavior towards HACM personnel includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language written or oral that is customarily used to insult or intimidate, may be cause for termination or denial.
- Threatening refers to oral or written threats or physical gestures that communicate intent to

abuse or commit violence. Actual physical abuse or violence will always be cause for termination.

- If any member of the family engages in, or has engaged in drug or alcohol abuse that interferes with the health, safety or peaceful enjoyment of other residents (see “Family Obligations” in this chapter).
- Crime by any family member, such as:
  - Fraud, bribery or other corrupt or criminal act in connection with any Federal housing program.
  - Drug-related criminal activity (as defined by law).
  - Violent criminal activity in this chapter).
  - Criminal use of physical force against person or property.
  - Other criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents, persons residing in the vicinity, HACM employees/contractors, the owner, or property management staff.
  - If the HACM determines that any household member is engaging in or has engaged in drug-related criminal activity while participating in the Housing Choice Voucher program, within the past five (5) years, the HACM may terminate assistance.
  - If any member of the family is subject to a lifetime registration requirement under a State sex offender registration program.
  - If the family violates the lease by engaging in drug-related or violent criminal activity, the HACM may terminate assistance.
  - If the HACM determines that a member of the household is fleeing to avoid prosecution, or custody or confinement after conviction, that is a felony under the laws of the place from which the individual flees, the HACM will terminate assistance.
  - If the HACM determines that a member of the household is violating a condition of probation or parole imposed under Federal or State law, the HACM will terminate assistance.
  - In appropriate cases, the HACM may permit the family to continue receiving assistance provided that family members determined to have engaged in the proscribed activities will not reside in the unit. If the violating member is a minor, the HACM may consider individual circumstances upon the advice of Juvenile Court officials.
  - Assistance restrictions are imposed on students enrolled in an institution of higher education (refer to [Chapter 2](#), “Eligibility for Admission” of this Administrative Plan).
  - The HACM must find elements of crime covered by civil standards and with a preponderance of evidence. The HACM is not required to show proof of crime beyond a reasonable doubt.

**Violence Against Women and Justice Department Reauthorization Act of 2010 (VAWA 2010); Violence Against Women Reauthorization Act of 2013 (VAWA 2013)** The requirements of VAWA that are incorporated into the Housing Choice Voucher HAP Contract and Tenancy Addendum are as follows:

- An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as serious or repeated violations of the lease or other “good cause” for termination of assistance, tenancy, or occupancy rights of a victim of abuse (section 8(o)(7)(C) of the U.S. Housing Act of 1937).
- Criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of a tenant’s household or any guest or other

person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated individual of the tenant is the victim or threatened victim of that abuse (section 8(o)(7)(D)(i) of the U.S. Housing Act of 1937).

- Notwithstanding the VAWA restriction on admission, occupancy or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, a HACM may terminate assistance to, or an owner or manager may "bifurcate" a lease, or otherwise remove a household member from a lease, without regard to whether a household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members of others. This action may be taken without evicting, removing, terminating assistance to the occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State and local law for the termination of leases or assistance under the Housing Choice Voucher Program (section 8(o)(7)(D)(ii) of the U.S. Housing Act of 1937).
- Nothing in section 8(o)(7)(D)(i) may be construed to limit the authority of a public housing agency, owner or manager, when notified, to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up (section 8(o)(7)(D)(iii) of the U.S. Housing Act of 1937).
- Nothing in section 8(o)(7)(D)(i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager or public housing agency does not subject an individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding stand than other tenants in determining whether to evict or terminate (section 8(o)(7)(D)(iv) of the U.S. Housing Act of 1937).
- Nothing in section 8(o)(7)(D)(i) shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than section 8(o)(7)(D)(i) for victims of domestic violence, dating violence, sexual assault, or stalking (section 8(o)(7)(D)(iv) of the U.S. Housing Act of 1937).

### **Definitions**

As used in VAWA:

- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person
- against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship
- The term *sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.
- The term *stalking* means:
  - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or
  - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
  - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to:
    - 1) that person,
    - 2) a member of the immediate family of that person, or
    - 3) the spouse or intimate partner of that person.
- The term *affiliated individual* means, with respect to an individual:
  - A spouse, parent, brother, or sister, or child of that individual, or an individual to whom that individual stands in place of a parent; or
  - Any individual, tenant, or lawful occupant living in the household of that individual.
- The term *actual and imminent threat* consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

## **Notification**

### **HACM**

The HACM 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 HACM's policies. Therefore, if the HACM makes a determination to deny admission to an applicant family, the HACM will include in its notice of denial:

- A statement of the protection against denial provided by VAWA.
- A description of HACM confidentiality requirements.
- A request that an applicant wishing to claim this protection submit to the HACM documentation meeting the specifications below with her or his request for an informal hearing.

### **VAWA Protections (24 CFR 5.2005)**

- The HACM must provide notice to HCV tenants of their rights under VAWA and this subpart, including the right to confidentiality and the exceptions; and
- The HACM must provide notice to owners and management agents of assisted housing, of their rights and obligations under VAWA and this subpart; and
- Owners and management agents of assisted housing administering an Office of Housing



project-based HCV program must provide notice to HCV tenants of their rights and obligations under VAWA and this subpart.

- *Limitations of VAWA protections.*
  - 1) Nothing in this section limits the authority of the HACM, owner, or management agent to evict a tenant or terminate assistance for a lease violation unrelated to domestic violence, dating violence, sexual assault, or stalking, provided that the HACM, owner, or management agent does not subject such a tenant to a more demanding standard than other tenants in making the determination whether to evict, or to terminate assistance or occupancy rights.
  - 2) Nothing in this section may be construed to limit the authority of a HACM, owner, or management agent to evict or terminate assistance to any tenant or lawful occupant if the HACM, owner, or management agent can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the public housing or HCV assisted property if that tenant or lawful occupant is not terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an “actual imminent threat” if they meet the standards provided in the *definitions* of this section.
  - 3) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section, should be utilized by a HACM, owner, or management agent 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.

## **Documentation**

### *Victim Documentation*

### **HACM**

An applicant claiming that the cause of an unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, sexual assault, or stalking must provide documentation; (1) demonstrating the connection between the abuse and the unfavorable history, and (2) naming the perpetrator of the abuse. The documentation may consist of any of the following:

- A statement signed by the victim certifying that the information provided is true and correct and that it describes bona fide incident(s) of actual or threatened domestic violence, dating violence, sexual assault, or stalking.
- 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.
- Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider, an attorney, or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person’s belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.
- In accordance with VAWA, record of an administrative agency.
- In accordance with documentation from a mental health provider.

*Perpetrator Documentation***HACM**

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

- A signed statement; (1) requesting that the perpetrator be removed from the application and, (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the HCV unit.
- Documentation that the perpetrator has successfully completed or is successfully undergoing rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

**Time Frame for Submitting Documentation****HACM**

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

**Remedies Available to Victims**

- *Lease bifurcation.* Notwithstanding any Federal, State, or local law to the contrary, a HACM, owner, or management agent may bifurcate a lease, or remove a household member from a lease without regard to whether the household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, or local law for termination of assistance or leases under the relevant public housing, Housing Choice Voucher, and project-based programs.
- *Court orders.* Nothing in this subpart may be construed to limit the authority of a HACM, owner, or management agent, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and to address the distribution of property among household members in a case where a family breaks up.
- The HACM will refer families to services in Merced County that provide assistance to families who may be victims of domestic violence.

**Portability in the Housing Choice Voucher Program**

In addition to the protections to victims of domestic violence which must be taken into consideration when a HACM contemplates terminating a family's participation in the Housing

Choice Voucher Program, VAWA 2013 also amended section 8(r) of the U.S. Housing Act to provide an exception to the prohibition against a family moving under the portability provisions in violation of the lease. VAWA 2013 provides that the family may receive a voucher and move in violation of the

lease under the portability procedure if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonable believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

### **Explanations and Terms**

The term “promptly” when used with the family obligations always means “within thirty (30) days.” Denial or termination of assistance is always optional except where this Administrative Plan or the regulations state otherwise.

### **HACM Discretion [24 CFR 982.552(c)]**

In deciding whether to deny or terminate assistance because of action or failure to act by members of the family, the HACM has discretion to consider all of the circumstances in each case, including the seriousness of the case. The HACM will use its discretion in reviewing the extent of participation or culpability of individual family members and the length of time since the violation occurred. The HACM may also review the family’s more recent history and record of compliance and the effects that denial or termination of assistance may have on other family members who were not involved in the action or failure to act.

The HACM may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in, or were culpable for the action or failure to act, will not reside in the unit. The HACM may permit the other members of the family to continue in the program.

### **Housing Quality Standards (HQS) Breach**

The Inspector and/or the Director of Housing Programs or his/her designee will determine if an HQS breach as identified in 24 CFR 982.404 (b) is the responsibility of the family. Families may be given extensions to cure HQS breaches by the Director of Housing Programs or his/ her designee.

### **Lease Violations**

One or more of the following criteria will be used to decide if a serious or repeated violation of the lease will cause a termination of assistance:

- If the owner terminates tenancy through court action for serious or repeated violations of the lease.
- If the owner notified the family of termination of assistance for serious or repeated lease violations, and the family moves from the unit prior to the completion of court action, and the HACM determines that the cause is a serious or repeated violation of the lease based on available evidence.
- If there are police reports, neighborhood complaints, or other third party information, and the HACM has verified the information.

### **Proposed Additions to the Family**

The HACM will deny a family's request to add additional family members who are:

- Persons who have been evicted from public assisted housing.
- Persons who have previously violated a family obligation listed in 24 CFR 982.551 of the

HUD regulations.

- Persons who have been part of a family whose assistance has been terminated under the voucher program.
- Persons who commit drug-related criminal activity or violent criminal activity.
- Persons who are subject to a lifetime registration requirement under a State sex offender registration program.
- Persons who commit fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program.
- Persons who currently owe rent or other amounts to the HACM or to another Housing Authority in connection with the Housing Choice Voucher Program or public housing assistance under the 1937 Act.
- Persons who have engaged in or threatened abusive or violent behavior toward Housing Authority personnel.

#### **Family Member Moves Out**

Families are required to notify the HACM if any family member leaves the assisted household. When the family notifies the HACM, they must furnish the following information:

- The date the family member moved out
- The new address, if known, of the family member
- A statement as to the length of time the family member will be out of the household.
- Persons who do not meet the HACM's definition of family.

#### **Limitation on Profit-making Activity in Unit**

If the HACM determines that the use of the unit as a business is not incidental to its use as a dwelling unit, it will be considered a program violation. If the HACM determines that the business is not legal, it will be considered a program violation.

#### **Interest in Unit**

The owner may not reside in the assisted unit regardless of whether they are a member of the assisted family, unless the family owns the mobile home and rents the pad, excluding shared housing, unless the client is a participant in the Homeownership Option Program.

The owner of a shared housing unit may reside in the unit. A resident owner may enter into a Housing Assistance Payment (HAP) contract with the HACM. However, housing assistance may not be paid on behalf of an owner. An assisted person may not be related by blood or marriage to a resident owner.

#### **Fraud**

In each case, the HACM will consider which family members were involved, the circumstances, and any hardship that might be caused to innocent members.

In the event of false citizenship claims, see "Procedures for Non-citizens" in this Chapter.

### **J. DRUG-RELATED AND VIOLENT CRIMINAL ACTIVITY**

"Drug" is a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Drug-related criminal activity" is the illegal manufacture, sale, distribution, use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug. Drug-related

criminal activity means on or off the premises, not just on or near the premises.

“Violent criminal activity” includes 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, and the activity is being engaged in by any family member.

Definitions for other terms used in this chapter are provided in the Glossary.

### **Ineligibility for Drug-Related or Violent Activity**

In an effort to prevent future drug-related and other criminal activity, as well as other patterns of behavior that pose a threat to the health, safety or right to peaceful enjoyment of the premises by other residents, and as required by 24 CFR 982, Subpart L and CFR Part 5, Subpart J, the Housing Authority will endeavor to screen applicants as thoroughly and fairly as possible for drug-related and violent criminal behavior. Such screening will apply to any member of the household who is 18 years of age or older.

Persons evicted from federally assisted housing because of drug-related criminal activity are ineligible for admission to the Housing Choice Voucher Program for a five (5) year period beginning on the date of such eviction, unless the household member completed an approved, supervised drug rehabilitation program or the circumstances for the eviction no longer exist. For example, the individual involved in drugs is no longer in the household because the person is deceased or incarcerated.

Applicants may be denied assistance if they have been arrested and convicted of a drug-related or violent crime, or evicted from federally assisted housing due to drug-related or violent criminal activity within the last five (5) years prior to the date of the certification interview.

Participants may be terminated who have been arrested and convicted of a drug-related or violent crime, and/or evicted from federally assisted housing due to drug-related or violent criminal activity within the last five (5) years prior to the date of the notice to terminate assistance, or whose activities have created a disturbance in the building or neighborhood.

### **Screening Out Illegal Drug Users and Alcohol Abusers**

The HACM will deny participation in the program to applicants in cases where the HACM determines there is reasonable cause to believe that the person is illegally using drugs or abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. This includes cases where the HACM determines that there is a pattern of illegal use of a drug, or pattern of alcohol abuse.

The HACM will consider the use of a drug or alcohol to be a pattern if there is more than one incident documented and verified by the HACM during the previous six (6) months.

### **Denial of Assistance for Sex Offenders**

The HACM will deny admission if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening applicants, the HACM will perform criminal history background checks to determine whether any household member is subject to a lifetime sex offender registration requirement, to include but not limited to the use of the Dru Sjodin National Sex Offender database located at [www.nsopw.gov](http://www.nsopw.gov).

### **Confidentiality of Criminal Records**

The HACM will ensure that any criminal record received is maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which it was requested is accomplished.

### **Required Evidence**

“Preponderance of 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. The intent is not to prove criminal liability, but to establish that the act(s) occurred. Preponderance of evidence is not to be determined by the number of witnesses, but by the greater weight of all evidence.

“Credible evidence” may be obtained from police and/or court records. Testimony from neighbors, when combined with other factual evidence, can be considered credible evidence. Other credible evidence includes documentation of drug raids or arrest warrants where illegal drugs were found or illegal activity discovered.

The HACM may pursue fact-finding efforts as needed to obtain credible evidence. The HACM may terminate assistance for criminal activity by a household member under this section if the HACM has determined that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

### **Notice of Termination of Assistance**

In any case where the HACM decides to terminate assistance to the family, the Housing Authority must give the family written notice which states:

- The reason(s) for the proposed termination.
- A copy of the criminal record information, if applicable.
- The effective date of the proposed termination.
- The family’s right, if they disagree, to request an informal hearing to be held before termination of assistance.
- The date by which a request for an informal hearing must be received by the Housing Authority.

If the HACM proposes to terminate assistance for criminal activity as shown by a criminal record, the HACM will provide the subject of the record with a copy of the criminal record or type of reports used to propose termination of assistance.

If the Notice of Proposed Termination letter is returned to the HACM with a forwarding address, the Eligibility Specialist will make no more than one (1) attempt to forward the appointment letter to the new forwarding address.

The HACM will simultaneously provide written notice of the contract termination to the owner so that it will coincide with the termination of assistance. The notice to the owner will not include any details regarding the reason for termination of assistance.

**Notice of Denial of Assistance**

In any case where the HACM decides to deny eligibility of assistance to the family, the HACM must give the family written notice which states:

- The reason(s) for the denial of eligibility.
- A copy of the criminal record information, if applicable.
- The effective date of the denial of eligibility.
- The family's right, if they disagree, to request an informal review.
- The date by which a request for an informal review must be received by the Housing Authority.

If the HACM proposes to deny eligibility of assistance for criminal activity as shown by a criminal record, the HACM will provide the subject of the record with a copy of the criminal record or list of reports used to deny eligibility.

If the Notice of Proposed Ineligibility letter is returned to the HACM with a forwarding address, the Eligibility Specialist will make no more than one (1) attempts to forward the appointment letter to the new forwarding address.

**J. PROCEDURES FOR NON-CITIZENS [24 CFR 5.514, 5.516, .518]****Denial or Termination due to Ineligible Immigrant Status**

Applicant or participant families in which all members are neither U.S. citizens nor eligible immigrants are not eligible for assistance and must have their assistance terminated. The Housing Authority must offer the family an opportunity for a hearing (see Chapter 2, "Eligibility for Admission" of this Administrative Plan).

Assistance may not be terminated while verification of the participant family's eligible immigration status is pending.

**False or Incomplete Information**

When the HACM has clear, concrete, or substantial documentation (such as a permanent resident card or information from another agency) that contradicts the declaration of citizenship made by an applicant or participant, an investigation will be conducted and the individual will be given an opportunity to present relevant information.

If the individual is unable to verify their citizenship, the HACM will give them an opportunity to provide a new declaration as an eligible immigrant or an opportunity to elect not to contend their status.

The HACM will then verify eligible status and deny, terminate, or prorate as applicable.

**Procedure for Denial or Termination**

If the family (or any member) claimed eligible immigrant status and the United States Citizenship and Immigration Services (USCIS) primary and secondary verifications failed to document the

status, the family may make an appeal to the USCIS and request a hearing with the Housing Authority either after the USCIS appeal or in lieu of the USCIS appeal.

After the HACM has made a determination of ineligibility, the family will be notified of the determination and the reasons and informed of the option for prorated assistance (if applicable).

**K. ZERO (\$0) ASSISTANCE TENANTS [24 CFR 982.455(a)]**

The family may remain in the unit at \$0 assistance for up to one hundred eighty (180) days after the last HAP. If the family is still in the unit after one hundred eighty (180) days, the assistance will be terminated. If, within the one hundred eighty (180) day timeframe, an owner rent increase or a decrease in the total tenant payment causes the family to be eligible for a housing assistance payment, the HACM will resume assistance payments for the family.

In order for a family to move to another unit during the one hundred eighty (180) days, the rent for the new unit would have to be high enough to necessitate a HAP.

**L. OPTION NOT TO TERMINATE FOR MISREPRESENTATION [24 CFR 982.551, 982.552(c)]**

If the family has misrepresented any facts that caused the HACM to overpay assistance, the HACM may choose not to terminate and may offer to continue assistance provided that the family executes a repayment agreement and makes payments in accordance with the agreement or reimburses the HACM in full.

**M. MISREPRESENTATION IN COLLUSION WITH OWNER [24 CFR 982.551, 982.552 (c)]**

If the family intentionally, willingly, and knowingly commits fraud or is involved in any other illegal scheme with the owner, the HACM will deny or terminate assistance.

In making this determination, the HACM will carefully consider the possibility of overt or implied intimidation of the family by the owner and the family's understanding of the events.

**N. MISSED APPOINTMENTS AND DEADLINES [24 CFR 982.551, 982.552 (c)]**

It is a family obligation to supply information, documentation, and certification as needed for the HACM to fulfill its responsibilities. The HACM schedules appointments and sets deadlines in order to obtain the required information. The obligations also require that the family allows the HACM to inspect the unit, and appointments are scheduled for this purpose.

An applicant or participant who fails to keep an appointment, or to supply information required by a deadline without notifying the HACM, may be sent a Notice of Proposed Termination of Assistance for failure to provide required information, or for failure to allow the HACM to inspect the unit.

The family will be given information about the requirement to keep appointments and the number of times appointments will be rescheduled, as specified in this Administrative Plan.

Appointments will be scheduled and time requirements will be imposed for the following events and circumstances:

- Eligibility for admissions



- Verification procedures
- Voucher issuance and briefings
- Housing Quality Standards inspections
- Recertifications
- Appeals

Acceptable reasons for missing appointments or failing to provide information by deadlines are:

- Medical emergency
- Any other emergency not including incarceration

**Procedure when Appointments are missed or Information is not provided**

For most purposes in this Administrative Plan, the family will be given two (2) opportunities before being issued a Notice of Proposed Termination or denial for breach of a family obligation.

After issuance of the termination notice, if the family offers to correct the breach within the time allowed to request a hearing, the notice may be rescinded if the family offers to cure and the family does not have a history of non-compliance.

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## Chapter 16

### OWNER DISAPPROVAL AND RESTRICTION

[24 CFR 982.54, 982.306, 982.453]

#### **INTRODUCTION**

It is the policy of the HACM to recruit owners to participate in the voucher program. The HACM will provide owners with prompt and professional service in order to maintain an adequate supply of available housing throughout the jurisdiction of the HACM. The regulations define when the HACM must disallow an owner participation in the program, and they provide the HACM discretion to disapprove or otherwise restrict the participation of owners in certain categories. This chapter describes the criteria for owner disapproval, and the various penalties for owner violations.

#### **A. DISAPPROVAL OF OWNER [24 CFR 982.306, 982.54(d)(8)]**

The owner does not have the right to participate in the program. For purposes of this section, "owner" includes a principal or other interested party. The HACM will not approve the owner for the following reasons:

- HUD or other agency directly related has informed the HACM that the owner has been disbarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.
- HUD has informed the HACM that the Federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other Federal equal opportunity requirements and such action is pending.
- HUD has informed the HACM that a court or administrative agency has determined that the owner violated the Fair Housing Act or other Federal equal opportunity requirements.
- Unless their lease was effective prior to June 17, 1998, the owner may not be a parent, child, grandparent, grandchild, sister or brother of any family member. The HACM ~~may~~ ~~will~~ waive this restriction as a reasonable accommodation for a family member who is a person with a disability.
- In cases where the owner and tenant bear the same last name, the HACM may at its discretion, require the family and or owner to certify whether they are related to each other in any way.
- The owner has violated obligations under a HAP contract under ~~Housing Choice Voucher~~ Section 8 of the 1937 Act (42 U.S.C. 1437f).
- ~~The owner has violated any obligation under the HAP Contract for the dwelling unit, including the owner's obligations to maintain the unit to HQS, including any standards the HACM has adopted in this policy.~~
- The owner has committed fraud, bribery or any other corrupt act in connection with any Federal housing program.
- The owner has engaged in drug-related criminal activity or any violent criminal activity.
- The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs or with applicable housing standards for units leased with project- based Housing Choice Voucher assistance or leased under any other Federal Housing Program.
- The owner has a history or practice of renting units that fail to meet State or local housing codes.
- The owner has not paid State or local real estate taxes, fines or assessments.
- The owner has failed to comply with regulations, the mortgage or note, or the regulatory agreement for projects with mortgages insured by HUD or loans made by HUD.

- The owner has not provided a tax identification number on the IRS W9 form or has not provided a number that corresponds with IRS records, according to IRS rules, and has not corrected the number or responded to HACM's correspondents.
- The owner owes any amount of monies to the HACM.
- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under the Housing Choice Voucher Program or any other Federally assisted housing program.
- for activity by the tenant, any member of the household, a guest or another person under the control of any member of the household that:
  - Threatens the right to peaceful enjoyment of the premises by other residents.
  - Threatens the health or safety of owners, other residents, employees of the Housing Authority, or other persons engaged in management of the housing.
  - Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises ~~or~~.
  - Engages in ~~is~~ drug-related criminal activity or violent criminal activity.
  - The owner has engaged in or threatened abusive or violent behavior toward HACM personnel. (See below for definition)

"Abusive or violent behavior towards HACM personnel" includes, but is not limited to, verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate, may be cause for termination or denial of owner participation in the program.

"Threatening" includes, but is not limited to oral or written threats, suggestions, or physical gestures that communicate an intent to abuse or commit violence. Actual physical abuse or violence will always be cause for termination of an owner in participation in the program.

## B. OWNER RESTRICTIONS AND PENALTIES [24 CFR 982.453]

If an owner has committed fraud or abuse or is guilty of frequent or serious contract violations, the HACM will restrict the owner from future participation in the program for a period of time commensurate with the seriousness of the offense. The HACM may also terminate some or all contracts with the owner.

Before imposing any penalty against an owner, the HACM will review all relevant factors pertaining to the case, and will consider such factors as the owner's record of compliance and the number of violations.

### Penalties

~~HUD notification of owner debarment/suspension: Restricted until HUD reinstates~~

~~HUD notification of violation of fair housing and federal equal opportunity: Restricted until HUD reinstates (Includes HACM's investigations and forwarding of violation to HUD and/or Fair Housing)~~

~~Violation of contract obligations, including, but not limited to: (HACM discretion on penalty)~~

- ~~• Collecting excess rent~~
- ~~• Unallowed charges for services or amenities~~

- Collecting HAP on unit not occupied by participant
- Failure to provide owner-supplied utilities or services
- Fraudulent claim
- Permitting an unauthorized occupant
- Non-compliant eviction – Third violation
- Falsification of rent comparable for a unit in same complex
- Unapproved agreements with onerous or prohibited provisions
- Violation of tenant rights/issuance of false eviction notices

Owner fraud, bribery or other corrupt act in federal housing program, including abusive or threatening behavior toward HACM personnel: Restricted Indefinitely

Owner engaged in drug-related criminal activity or violent criminal activity: Minimum of three years

Owner has engaged in or threatened abusive or violent behavior toward HACM personnel: Restricted indefinitely

History of noncompliance with HQS/codes and failure to correct serious HQS deficiencies resulting in 4 or more abatements during one contract term: Minimum of one year

Failure to provide Tax Identification Number to the HACM or to provide correct Tax Identification Number per IRS: Restricted until Tax Identification Number corrected and correct W-9 submitted

Failure to pay any outstanding debts owed to the HACM: HACM discretion

In some cases, the HACM may cancel only those contracts that have been violated.

If the violation is curable (such as HQS breaches or noncompliance evictions), the HACM will abate assistance and give the owner an opportunity to correct before terminating.

Leniency may be justified based on the owner's history of compliance, evidence of intent, knowledge of the nature of the violation, absence of harm to the tenant, and willingness to cure.

#### **A. OTHER REMEDIES FOR OWNER VIOLATIONS**

##### **Overpayments**

If the landlord has been overpaid as a result of fraud, misrepresentation or violation of the Contract, the HACM may terminate the Contract and arrange for restitution to the HACM and/or family as appropriate.

The HACM will make effort to recover any overpayments made as a result of landlord fraud or abuse, including filing suit. Payments otherwise due to the owner may be debited in order to repay the HACM or the tenant, as applicable.

#### **B. AUTHORIZATION FOR PENALTIES**

Housing Choice Voucher staff may authorize abatement for HQS failure. The Housing Choice Voucher Director may authorize and waive any other penalties

#### **C. APPEALS**

Owners in the Housing Choice Voucher Program have no rights of appeal. However, the HACM

~~considers any information the penalized owner presents to dispute the HACM's determination.~~

### C. CHANGE IN OWNERSHIP

A change in ownership may require execution of a new contract.

The HACM may approve the assignment of the HAP contract at the ~~old~~ previous owner's request. The HACM may approve the assignment, since they are a party to the contract. The HACM may deny approval of assignment of the contract, for any of the reasons listed in ~~Section A of this Chapter~~ "Disapproval of Owner" in this chapter.

The HACM will ~~also~~ process a change of ownership only upon the written request of the new owner and only if accompanied by a copy of the ~~escrow statement~~ recorded deed or other document showing the transfer of title and a W9 (IRS form) signed by the new owner showing the ~~employee identification number~~ the Federal Tax Identification number or Social Security number of the new owner.

Note: the HACM must receive a written request by the owner in order to change the HAP payee and/or the address to which payment is to be sent.

If the new owner does not want an assignment of the contract, the HACM will terminate the HAP contract with the old owner, since they are no longer the owner. The new owner may offer the family a new assisted lease. The family may elect to enter into the new lease or move to another unit.

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## Chapter 17

**PROGRAM INTEGRITY ADDENDUM**

[24 CFR 792.101 to 792.204, 982.54]

**INTRODUCTION**

This chapter outlines the HACM's policies for the prevention, detection and investigation of program abuse and fraud. The U.S. Department of HUD conservatively estimates that 2 600 million dollars is paid annually to program participants who falsify or omit material facts in order to gain more rental assistance than they are entitled to under the law. HUD further estimates that 12% of all HUD assisted families are either totally ineligible, or are receiving benefits which exceed their legal entitlement.

The HACM is committed to ensuring that the proper level of benefits is paid to all participating families, and that housing resources reach only income eligible families so that program integrity can be maintained.

The HACM will take all steps necessary to prevent fraud, waste and mismanagement so that program resources are utilized judiciously.

~~This chapter outlines the HACM's policies for the prevention, detection and investigation of program abuse and fraud.~~

Note: All allegations of unauthorized persons, unreported income, or other program violations will be referred directly to the District Attorney's office for their investigation, prosecution, and/or repayment agreement amounts for both applicants, clients, and owners participating in or about to participate in the Program.

**A. CRITERIA FOR INVESTIGATION OF SUSPECTED ABUSE AND FRAUD**

~~Note: Applicants whose application is being reviewed for admittance to the program, and applicants who have been issued a voucher but have not initially leased up on the program are included, along with participants of the program, in this chapter. Wherever participating family is stated in this chapter, it includes an applicant family who is being processed for admittance to the HCV Program.~~

Under no circumstance will the HACM undertake an inquiry or an audit of an applicant or participating family arbitrarily. The HACM's expectation is that applicants and participating families will comply with HUD requirements, provisions of the certificate or voucher, and other program rules. HACM staff will make every effort (formally and informally) to orient and educate all families in order to avoid unintentional violations. However, the HACM has a responsibility to HUD, to the community, and to eligible families in need of housing assistance, to monitor applicants/participants and owners for compliance and when indicators of possible abuse come to the HACM's attention, to investigate such claims.

The HACM will initiate an investigation of a participating family only in the event of one or more of the following circumstances:

- Referrals, Complaints or Tips. The HACM will follow up on referrals from other agencies, companies or persons which are received by mail, telephone or in person, which allege that a family is in non-compliance with, or otherwise violating the family obligations or any other program rules. A copy of the allegation will be retained in a separate allegation file in the family's file. Such follow-up will be made providing that the referral contains at least one item of information that is independently verifiable. The allegation will be forwarded to the District Attorney's office for their investigation.
- Internal File Review. A follow-up will be made if HACM staff discovers (as a function of a certification, recertification, an interim redetermination, or a quality control review) information or facts which conflict with previous file data, the HACM's knowledge of the family, or is discrepant with statements made by the family.
- Verification of Documentation. A follow-up will be made if the HACM discovers (as a function of a certification or recertification, and interim redetermination, or a quality control review); information or facts receives independent verification or documentation which conflicts with previous file data, the HACM's knowledge of the family, or is discrepant with statements made by the family representations in the family's file (such as public record information or credit bureau reports, or reports from other agencies).

## B. STEPS THE HACM WILL TAKE TO PREVENT PROGRAM ABUSE AND FRAUD

The HACM management and staff will utilize various methods and practices (listed below) to prevent program abuse, noncompliance, and willful violations of program rules by applicants and participating families. This policy objective is to establish confidence and trust in the management by emphasizing education as the primary means to obtain compliance by families.

- ~~Program Orientation Session. Mandatory orientation sessions will be conducted by the HACM staff for all prospective program participants, either prior to or upon issuance of a voucher.~~
- ~~Participant Counseling. The HACM may provide participant counseling when needed to clarify any confusion pertaining to program rules and requirements.~~
- ~~Review and explanation of Forms. Staff will explain all required forms and review the contents of the signed forms at the orientation sessions. (Port ins are required to attend an orientation briefing, which may be a mini briefing rather than a group orientation briefing.) At recertification the family receives a copy of the signed forms, and may request an explanation at any time by staff.~~
- ~~Use of Instructive Signs and Warnings. Instructive signs will be conspicuously posted in common areas and interview areas to reinforce compliance with program rules and to warn about penalties for fraud and abuse~~

- Things You Should Know (HUD-1140-OIG). This program integrity bulletin (created by HUD’s Inspector General) will be furnished and explained to all applicants to promote understanding of program rules, and to clarify the HACM’s expectations for cooperation and compliance.
- Briefing Session. Mandatory orientation sessions will be conducted by the HACM staff for all prospective program participants, either prior to or upon issuance of a voucher. At the conclusion of all Program Orientation Sessions, the family representative will be required to sign a “Housing Choice Voucher” to confirm that all rules and pertinent regulations were explained to them.
- Review and Explanation of Forms. Staff will explain all required forms and review the contents of all recertification documents prior to signature.

The HACM will routinely provide participant counseling as a part of every recertification interview in order to clarify any confusion pertaining to program rules and requirements as follows.

### C. STEPS THE HACM WILL TAKE TO DETECT PROGRAM ABUSE AND FRAUD

The HACM staff will maintain a high level of alertness to indicators of possible abuse and fraud by assisted families.

- Quality Control File Reviews. ~~During a fiscal year, participant files will be reviewed. The amount reviewed will be according to the SEMAP requirement under the “universal” amount. A portion of the reviews will include initial certification and recertification files. Such reviews shall include, but are not limited to:~~ **Prior to initial certification, and at the completion of all subsequent recertifications, each participant file will be reviewed. Such reviews shall include, but are not limited to:**
  - Assurance that verification of all income and deductions is present.
  - Changes in reported Social Security Numbers or dates of birth.
  - Authenticity of file documents.
  - **Ratio between reported income and expenditures.**
  - Review of signatures for consistency with previously signed file documents.
  - All forms are correctly dated and signed.
- Observation. The HACM management and occupancy staff ~~(to include the inspection personnel)~~ will maintain high awareness of circumstances which may indicate program abuse or fraud, such as unauthorized persons residing in the household and unreported income. Observations will be documented in the family’s file.
- Public Records Bulletins may be reviewed by ~~Management and~~ HACM staff.
- State Wage Data Record Keepers. Inquiries to State Wage and Employment record keeping agencies as authorized under Public Law 100-628, the Stewart B. McKinley Homeless Assistance Amendments Act of 1988, may be made ~~annually~~ in order to detect unreported wages or unemployment compensation benefits.
- **Enterprise Income Verification (EIV) system**. The HACM will verify tenant employment and income information during mandatory reexaminations of family composition and income; and reduce administrative and subsidy payment errors in accordance with 24 CFR §5.236 and administrative guidance issued by HUD. The HACM has established a procedure for EIV use.
- Credit Bureau Inquiries. Credit Bureau inquiries may be made (with proper authorization



by the participant) in the following circumstances:

- At the time of final eligibility determination
- When an allegation is received by the HACM wherein unreported income sources are disclosed.
- When a participant's expenditures exceed their reported income and no plausible explanation is given.

**D. THE HACM'S HANDLING OF ALLEGATIONS OF POSSIBLE ABUSE AND FRAUD**

The HACM staff will encourage all participating families to report suspected abuse to HCV staff. All such referrals, as well as referrals from community members and other agencies, will be thoroughly documented and placed in the participant's file. All allegations, complaints and tips will be carefully evaluated in order to determine if they warrant follow-up.

The HACM will not follow up on allegations which are vague or otherwise nonspecific. **Only allegations which contain one or more independently verifiable facts will be reviewed.**

**File Review**

An internal file review will be conducted to determine:

- If the subject of the allegation is a **client current voucher holder** of the HACM and if so, to determine whether or not the information reported has been previously disclosed by the family.
- It will then be determined if the HACM is the most appropriate authority to do a follow-up (more so than police or social services). Any file documentation of past behavior as well as corroborating complaints will be evaluated.

**Conclusion of Preliminary Review**

If at the conclusion of the preliminary file review, there are facts contained in the allegation which conflict with file data, and the facts are independently verifiable, the **HCV Director or HCV Manager** Director of Housing Programs, his/her designee or Eligibility ng Specialist will initiate an investigation to determine if the allegation is true or false.

**E. OVERPAYMENT TO OWNERS**

~~If the owner has been overpaid as a result of fraud, misrepresentation or violation of the Contract, the HACM may terminate the Contract and arrange for restitution to the HACM and/or family as appropriate.~~

~~The HACM will make effort to recover any overpayments made as a result of owner fraud or abuse. Payments otherwise due to the owner may be debited in order to repay the HACM or the tenant, as applicable.~~

Owners may be prosecuted for fraud through the District Attorney's office and also may be required to enter into Repayment Agreements through the District Attorney's office.

**If the HACM determines that the owner has retained housing assistance or claim payments the owner is not entitled to, the HACM may reclaim the amounts from future housing assistance or claim payments owed the owner for any units under contract. If future housing assistance or claim payments are insufficient to reclaim the amounts owed, the HACM will:**

- **Require the owner to pay the amount in full within thirty (30) days**
- **Pursue collections through a collection agency**

- Restrict the owner from future participation

#### F. HOW THE HACM WILL INVESTIGATE ALLEGATIONS OF ABUSE AND FRAUD

If the HACM determines that an allegation or referral warrants a follow-up, staff will forward the allegation to the Director of Housing Programs HCV Director or HCV Manager to forward to the District Attorney's office. The District Attorney's office steps will depend upon the nature of the allegation and may include, but are not limited to, items listed below. References to HACM below also include the District Attorney's office the Housing Authority will conduct the investigation. The steps taken will depend upon the nature of the allegation and may include, but are not limited to, the items listed below. In all cases, the HACM will secure the written authorization from the program participant for the release of information.

- Employment Income Verification (EIV).
- Credit Bureau Inquiries (CBI). In cases involving previously unreported income sources, a CBI inquiry may be made to determine if there is financial activity that conflicts with the reported income of the family.
- Employers and Ex-Employers. Employers or ex-employers may be contacted to verify wages which may have been previously undisclosed or misreported.
- Neighbors/Witnesses. Neighbors and/or other witnesses may be interviewed who are believed to have direct or indirect knowledge of facts pertaining to the HACM's review.
- Other Agencies. Investigators, case workers or representatives of other benefit agencies may be contacted.
- Public Records. If relevant, the HACM will review public records kept in any jurisdictional courthouse. Examples of public records which may be checked are: real estate, marriage, and divorce, uniform commercial code financing statements, voter registration, judgments, court or police records, state wage records, utility records and postal records.
- Interviews with Head of Household or Family Members. The HACM may discuss the allegation (or details thereof) with the head of household or family member by scheduling an appointment at the appropriate HACM's central office. A high standard of courtesy and professionalism will be maintained by the HACM staff person who conducts such interviews. Under no circumstance will inflammatory language, accusation, or any unprofessional conduct or language be tolerated by the management. If possible, an additional staff person will attend such interviews.
- Termination: In addition or in lieu of the interview with the Head of Household or Family Members, the HACM may begin proceedings to terminate the family from the Program and, in addition, may begin proceedings to prosecute the family. The family, of course, has the right to appeal the termination by requesting an Informal Review (applicant) or Informal Hearing (participant).

#### G. PLACEMENT OF DOCUMENTS, EVIDENCE AND STATEMENTS OBTAINED BY THE HACM

Documents and other evidence obtained by the HACM during the course of an investigation will be considered "work product" and will either be kept in the participant's file, or in a separate work file. Such cases under review will not be discussed among HACM staff unless they are involved in the process, or have information which may assist in the investigation.

#### H. CONCLUSION OF THE HACM'S INVESTIGATIVE REVIEW

At the conclusion of the investigative review, the District Attorney's Office will report the findings to the HCV Director or HCV Manager. reviewer will report the findings to the Director of Housing Programs or his or her designee. It will then be determined

whether a violation has occurred, a violation has not occurred, or if the facts are inconclusive. (If the findings indicate a fraud case of more than \$20,000, the District Attorney's office will forward the case to the Inspector General's office for their review and possible prosecution) It will be established if a violation has occurred, not occurred, or is inconclusive.

The following will be taken into consideration:

- The type of violation (procedural noncompliance, fraud).
- Whether the violation was intentional or unintentional.
- What amount of money (if any) is owed by the family.
- If the family is eligible for continued occupancy.

Once a program violation has been documented, the HACM will propose the most appropriate remedy based upon the type and severity of the violation.

#### **I. EVALUATION OF THE FINDINGS**

If it is determined that a program violation has occurred, the HACM and the District Attorney's office will review the facts to determine:

1. The type of violation (procedural, non-compliance, fraud).
2. Whether the violation was intentional or unintentional.
3. What amount of money (if any) is owed by the family.

If the family is eligible for continued occupancy, or should be denied admission to the program.

#### **ACTION PROCEDURES FOR VIOLATIONS WHICH HAVE BEEN DOCUMENTED.**

Once a program violation has been documented, the HACM will propose the most appropriate remedy based upon the type and severity of the violation. If the HACM determines that the violation whether procedural, non-compliance, or fraud occurred and that termination action needs to be taken, the HACM will do so in a timely manner.

The following examples are if the family **is allowed to remain on the program.**

1. **Procedural Non-compliance.** This category applies when the family "fails to" observe a procedure or requirement of the HACM **but does not misrepresent a material fact, and there is no retroactive assistance payments owed by the family.**

Examples of non-compliance violations are:

- Failure to appear at a pre-scheduled appointment.
- Failure to return verification in time period specified by the HACM.

**Warning** Notice to the Family. In such cases a notice will be sent to the family which may contain one or more of the following:

- A description of the non-compliance and the procedure, policy or obligation which was violated.
- The date by which the violation must be corrected, or the procedure complied with.

- The action which will be taken by the HACM if the procedure or obligation is not complied with by the date specified by the HACM.
  - The consequences of repeated (similar) violations.
2. **Procedural Non-compliance - Overpaid Assistance.** When the family owes money to the HACM for failure to report changes in income or assets, the ~~HACM or the District Attorney's Office will issue a HAP Repayment Agreement and the family will be notified in writing. This HAP Repayment Agreement will contain the following:~~ HACM will issue a **Notice of Proposed Termination letter.** This notice will contain the following:
- A description of the violation ~~and the date(s).~~
  - **The right to disagree and to request an informal hearing within ten (10) business days.**
  - **Instructions for the request of such hearing**
  - **The hearing officer will meet with them to discuss and explain the family obligation or program rule which was violated. The hearing officer will complete a Hearing Summary, mail one copy to the family and retain a copy in the family's file.**
- ~~Any amounts owed to the HACM.  
Monthly payments and due dates of payments.  
Consequence for failure to sign or make scheduled payments according to agreement.~~

~~If the family disagrees with the amount owing, they may request an informal hearing.~~

Participant Fails to Comply with HACM's and/or District Attorney's Notice. If the Participant fails to comply with the HACM's and/or District Attorney's notice, and a family obligation has been violated, the HACM will ~~initiate termination of assistance and/or the District Attorney's office will proceed with prosecution.~~ will follow through with termination of assistance.

### **Intentional Misrepresentations**

When a participant falsifies, misstates, omits or otherwise misrepresents a material fact, which results (or would have resulted) in an overpayment of housing assistance by the HACM, the HACM will evaluate whether or not:

- The participant had knowledge that his/her actions were wrong, and
- The participant willfully violated the family obligations or the law.

Knowledge that the action or inaction was wrong: This will be evaluated by determining if the participant was made aware of program requirements and prohibitions. The participant's signature on various certifications, ~~briefing certificate,~~ **Housing Choice Voucher**, and personal declaration(s) are adequate to establish knowledge of wrong-doing.

The participant willfully violated the law. Any of the following circumstances will be considered adequate to demonstrate willful intent:

- An admission by the participant **to HACM staff or others** of the misrepresentation, **illegal action or omission.**
- That the act was done repeatedly.
- If a false name or Social Security number was used.
- ~~If there were admissions to others of the illegal action or omission~~
- That the participant omitted material facts which were known to him/her (e.g., employment of self or other household member).
- That the participant falsified, forged or altered documents.

- That the participant uttered and certified to statements at an interim redetermination which were later independently verified to be false.

### **Dispositions of Cases Involving Misrepresentations**

In all cases of misrepresentations involving efforts to recover monies owed, the HACM may pursue, depending upon its evaluation of the criteria stated above, one or more of the following actions:

Criminal Prosecution: If the HACM has established criminal intent, and the case meets the criteria for prosecution, the HACM ~~will~~ **may refer the case to the local State or District Attorney, notify HUD's Office of the Inspector General (OIG), and terminate rental assistance.**

- ~~Review the case with the District Attorney, notify HUD's Inspector General's Office, and terminate rental assistance.~~
- ~~Have the District Attorney refer the case to HUD's Inspector General's Office and terminate rental assistance.~~

Administrative Remedies: The HACM ~~and/or the District Attorney~~ may terminate assistance and demand payment of restitution in full.

- Terminate assistance and execute a repayment agreement
- Terminate assistance and pursue restitution through civil litigation/prosecution and/or report amount owed to the credit bureau.
- Continue assistance at the correct level upon repayment of restitution in full.
- Permit continued assistance at the correct level and execute a repayment agreement

~~Prior to the final determination of the proposed action, the HACM will consider:~~

**A secondary purpose of the informal hearing is to assist the HACM in determining the course of action most appropriate for the case. Prior to the final determination of the proposed action, the HACM will consider:**

- The duration of the violation and number of false statements.
- The family's willingness to cooperate, and to accept responsibility for his/her actions.
- The family's ability to understand the rules
- The amount of money involved.
- The family's past history.
- Whether or not criminal intent has been established.
- The number of false statements.
- The seriousness of the violation and misrepresentation that occurred.

### **Ethical Standards for Employees**

**No employee of the HACM shall have any employment, or engage in any business or commercial transaction, or engage in any professional activity, or incur any obligation in which directly or indirectly he or she would have an interest that would impair his or her independence of judgment or action in the performance of his or her official duties or that would be in conflict with the performance of his or her official duties.**

**No employee shall have or enter into any contract with any person who has or enters into a contract with the HACM unless:**

**The contract between the person and the HACM is awarded pursuant to competitive bidding**

procedures and/or purchasing policies as outlined in regulations promulgated by the U.S. Department of Housing and Urban Development (HUD), state law, or the Housing Authority of the County of Merced's Procurement Policy; or

There shall be no preferential treatment given by an employee of the HACM acting in performance of his or her official duties to any person, agency or organization. Employees, Agents and Commissioners will be required to disclose whether he/she has any relationship or interest with vendors of the HACM.

No HACM employee shall solicit any gift or consideration of any kind, nor shall any HACM employee.

No HACM employee shall disclose without proper authorization non-public information or records concerning any aspects of the operation of the HACM, nor shall he or she use such information to the advantage or benefit of himself, herself, or any other person. This shall include records maintained on enrollees of the HACM, for whom a properly executed release of information form shall be obtained and kept in the client file. The release of any information relative to enrollees of the HACM shall be done pursuant to government regulations allowing the release of information among government agencies or agencies receiving government subsidy, shall be done following prescribed methods of requesting and transmitting such information, and shall be done with full knowledge of the enrollee except in those cases where through action of law the enrollee's knowledge is not required.

No HACM employee shall have an interest in a contract between any person and the HACM, except that this provision shall not apply if the contract was entered into prior to the employee's hire by the HACM.

**J. MANDATED USE OF THE ENTERPRISE INCOME VERIFICATION (EIV) SYSTEM [24 CFR 5.233]**

The EIV System is a web-based application, which provides the HACM with employment, wage, unemployment compensation and social security benefit information of tenants who participate in the Public Housing and various Section 8 programs under the jurisdiction of the Office of Public and Indian Housing (PIH). Information in EIV is derived from computer matching programs initiated by HUD with the Social Security Administration (SSA) and the U.S. Department of Health and Human Services (HHS), for all program participants with valid personal identifying information (name, date of birth (DOB), and Social Security number (SSN)) reported on the form HUD-50058.

The HACM is required to use the EIV system in its entirety to verify tenant employment and income information during mandatory reexaminations of family composition and income; and reduce administrative and subsidy payment errors in accordance with 24 CFR §5.236 and administrative guidance issued by HUD. The HACM has established a procedure for EIV use.

**K. ENTERPRISE INCOME VERIFICATION (EIV) USER'S RESPONSIBILITIES**

The EIV user's responsibilities include the following:

- Mandatory security awareness training at least annually
- Complete and sign Rules of Behavior and User Agreement
- Avoid leaving EIV information on the computer screen unattended
- EIV data generated from the printer must be retrieved immediately and shall not be left

lying unattended

- Each user is required to have his or her own User ID and password
- Maintain the security of user accounts by not disclosing own password
- Inform the Security Officer when EIV access is no longer needed
- Report to the Director of Housing Programs or the Security Officer and/or the HUD Security Officer immediately regarding any suspected violation or breach of system security

Record Keeping and Control

The following HUD forms shall be used to ensure the security of EIV data:

- HACM's EIV Access Authorization Form
- Rules of Behavior and User Agreement
- Security Awareness Training Attendance Sheet

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## Chapter 18

## OWNER OR FAMILY DEBTS TO THE HACM

[24 CFR 982.552]

**INTRODUCTION**

This chapter describes the HACM's policies for the recovery of monies which have been overpaid for families, and to owners. It describes the methods that will be utilized for collection of monies and the guidelines for different types of debts. It is the HACM's policy to meet the informational needs of owners and families, and to communicate the program rules in order to avoid owner and family debts. Before a debt is assessed against a family or owner, the file must contain documentation to support the HACM's claim that the debt is owed. The file must further contain written documentation of the method of calculation, in a clear format for review by the owner, the family or other interested parties.

When families or owners owe money to the HACM, the HACM will make every effort to collect it. The HACM will use a variety of collection tools to recover debts including, but not limited to:

- Requests for lump sum payments
- Civil suits
- Payment agreements
- Abatements
- Reductions in HAP to owner
- Collection agencies
- Credit bureaus
- Income tax set-off programs
- Referral to Inspector General's Office

**A. REPAYMENT AGREEMENT FOR FAMILIES [24 CFR 982.552 (c) v-ii)]**

A repayment agreement as used in this Administrative Plan is a document entered into between the HACM and a person who owes a debt to the HACM. It is similar to a promissory note, but contains more details regarding the nature of the debt, the terms of payment, any special provisions of the agreement, and the remedies available to the HACM upon default of the agreement. The Repayment Agreements may be instigated by the HACM or by the District Attorney's fraud/prosecution investigation.

The HACM will prescribe the terms of the payment agreement, including determining whether to enter into a payment agreement with the family based on the circumstances surrounding the debt to the HACM.

There are some circumstances in which the HACM will not enter into a payment agreement. They are:

- If the amount owing is more than \$2,500; this can include one or more debts owing to the HACM.
- If the HACM determines that the family is to be terminated from the program and an amount is owing to the HACM due to this termination, the amount may be collected either in full from the family or submitted to the credit collection agency, or collected through the means of court action.
- If the family already has a payment agreement in place.
- If the HACM determines that the family committed program fraud.



The maximum length of time the HACM will enter into a payment agreement with a family is twelve (12) to twenty-four (24) months **with approval of the Director of Housing Programs or Executive Director.**

The maximum amount for which the HACM will enter into a payment agreement with a family is \$2,500. If a family has two or more debts owing the HACM, they cannot exceed a total of \$2,500. **The HACM will review the total repayment amount and the family's ability to pay to determine the length of time allowed for repayment. Prior to the execution of the repayment agreement, the family must pay a minimum of 25% of the balance owed to the HACM, the down payment requirement is only offered on balances over 100.00 and the HA will only enter repayment agreement over**

- The maximum length of time the HACM will enter into a repayment agreement with a family is 12 months.
- **There is a \$50.00** minimum monthly amount, other than the repayment agreement cannot exceed 24 months in duration with approval of the Director of Housing Programs or the Executive Director.
- The HACM may consider the family's income and verify with the family the maximum amount of the monthly payment that the family can afford.
- The family will be terminated from the program if the repayment agreement is breached or if the family refuses to sign a Repayment Agreement, whether the amount owing is due to an owner damage claim or Housing Assistance Payment (HAP) repayment for late reporting, or fraud decision that has been overturned in the informal hearing process. The family will be given, of course, all opportunities for an informal hearing process, or court process for claims due to damages.
- Any reference to amounts owing by the family include any amounts owed to any federal housing program with any agency.
- ~~• If the family requests a move to another unit and has a repayment agreement in place and whether the repayment agreement is or is not in arrears:~~
- ~~• The family will be required to pay the balance in full prior to the issuance of a voucher.~~

**If the family wishes to relocate within Merced County, the tenant must have a history of keeping consistently current with their payments before they will be approved to move. Otherwise, they must pay off the remaining balance before they will be approved to move (for non-fraud issues). In the case of fraud, the tenant must have the balance paid off before moving.**

**If the family wishes to relocate outside Merced County, they must first pay off any debt owed to the HACM.**

#### **Late Payments to the Housing Authority Directly**

A payment will be considered to be in arrears if the payment has not been received by the close of the business day on which the payment was due. If the due date is on a weekend or holiday, the due date will be at the close of the next business day.

If the family's payment agreement is in arrears, and the family has not contacted or made arrangements with the HACM, the HACM will:

- ~~• Send a notice stating the overdue amount and the date the amount must be in the office to avoid terminating housing assistance.~~

- If termination action is taken, total amount due will be forwarded to HACM counsel or to local collection agency for collection.
- Require the family to pay the balance in full;
- Pursue civil collection of the balance due; or
- Terminate the housing assistance.

**Repayment Schedule for Moneys Owed to the HACM – (Not through the District Attorney's Office)**

**Amount Owed – Maximum Term**

\$0 – \$500 — 12 months

\$501 – \$1,000 — 18 months

\$1,001 – \$2,500 — 24 months

**Repayment Agreements Instigated by District Attorney and/or Prosecution**

Repayment Agreements may be instigated by the District Attorney's office after investigative services by their office. The Repayment Agreements can be issued for any amounts; there are no minimum or maximum amounts, and for any time frames that the District Attorney's office deems necessary. Either the client or owner who may owe amounts to the HACM and HUD. Repayment Agreements can be issued on clients and/or owners who are still on the program or who have been terminated from participating in the program.

Any fraud cases with amounts by an owner or client that exceed \$20,000 will be forwarded to the Inspector General's office for their review. They will refer the case back to our locality if they prefer that the local District Attorney's office pursue prosecution and repayment.

If the client or owner do not repay the amounts as indicated in the agreement, the HACM and the District Attorney's office will take action to prosecute, if not already done so.

The amount of dollars owed to the HACM and HUD will be computed from the time of commencement of the fraud. Family will have been considered ineligible at the commencement of the fraud and all HAP will be computed into the amount owed up to the time of termination from the Program or up to the time of an interim-conducted to process the correct HAP amount.

**Guidelines for Payment Agreements [24 CFR 982.552(b)(8)]**

The payment agreement will be executed between the HACM and the head of household, spouse, co-head and all household members age 18 years of age and older.

Monthly payments may be decreased in cases of hardship with the prior notice of the family, verification of the hardship, and the approval of the Director of Housing Programs or his or her designee.

The family will not be approved to move until the debt is paid in full, unless the move is the result of one of the following causes and the payment agreement is current:

- Family size exceeds the Housing Quality Standards (HQS) maximum occupancy standards

- The HAP contract is terminated due to owner non-compliance or opt-out
- A natural disaster
- Foreclosure of unit

**A. DEBTS OWED FOR CLAIMS [ (24 CFR 792.103, 982.552 (e)(v-vii)) ]**

~~If a family owes money to the HACM for claims paid to an owner:~~

- ~~Guidelines as stated above in Section A. will be followed~~

**B. DEBTS DUE TO MISREPRESENTATIONS/NON-REPORTING OF INFORMATION [24 CFR 982.163]**

HUD's definition of program fraud and abuse is a single act or pattern of actions that constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead, and that results in payment of HCV program funds in violation of HCV program requirements.

The HACM may terminate the family for program fraud, or it may allow the family to enter into a repayment agreement.

**Program Fraud**

~~Owners and families who owe money to the HACM due to program fraud will be terminated from the program due to violation of family obligation~~ **will be required to pay in accordance with the payment procedures for program fraud below.**

~~The HACM will review together with the District Attorney's office and/or Inspector General's office which families will be referred for criminal prosecution by the local police and the District Attorney's office. If a family owes an amount, which equals or exceeds \$20,000 as a result of program fraud, the case will be referred to the Inspector General.~~

~~If an owner or family owes an amount which equals or exceeds \$5,000 as a result of program fraud, the case will be referred to the Inspector General. Where appropriate, the HACM will refer the case for criminal prosecution.~~

**Payment Procedures for Program Fraud**

~~Families who commit program fraud will be terminated from the program and all amounts owing will be processed as stated in above paragraphs.~~ **or untimely reporting of increases in income will be subject to the following:**

- Sign a repayment agreement as outlined in the "Guidelines for Payment Agreements" in this chapter.
- The amount of the monthly payment will be determined in accordance with the family's current income but the payment will not be less than \$10 a month.

~~If the family is not terminated due to the informal hearing process, but the family owes moneys to the HACM, the HACM will either require the amount to be paid in full or will enter a repayment agreement with the family, as outlined above in Repayment Agreements, depending on the decision of the informal hearing officer.~~

**C. GUIDELINES FOR PAYMENT AGREEMENTS [24 CFR 982.552 (c) (v-vii)]**

**Re**Payment agreements will be executed between the HACM and the head of household, spouse,

co-head and all household members age 18 years old and over ~~or through the District Attorney's office.~~

- The payment agreement must be executed by the Director of Housing Programs or his or her designee.
- Payments may only be made by money order or cashier's check.
- The payment agreement will be in default when a payment is delinquent by the 10th calendar day of the month. A payment agreement will be considered to be in default when it is in arrears for thirty (30) days. The family's assistance may be terminated unless the HACM receives the balance of the payment agreement in full within thirty (30) days of the termination notice.
- ~~with prior notice of the family~~ and if requested with reasonable notice from the family, verification of the hardship, and the approval of the Director of Housing Programs or his/her Eligibility Supervisor designated staff. ~~A new repayment agreement will then be issued.~~

~~See Section A for default of repayment agreement.~~

~~No move will be approved.~~ A move may be denied until the debt is paid in full unless the move is the result of the following causes, and the repayment agreement is current:

- Family size exceeds the HQS maximum occupancy standards
- The HAP contract is terminated due to owner non-compliance or opt-out
- A natural disaster
- Foreclosure of unit

~~Refer to Section A of this Chapter for details of repayment agreements.~~

### **Additional Monies Owed**

If the family already has a payment agreement in place and incurs an additional debt to the Housing Authority, the HACM may enter into more than one payment agreement with the family, depending on their payment history.

### **B. DEBTS DUE TO MINIMUM RENT TEMPORARY HARDSHIP**

~~If the family owes the HACM money for rent arrears incurred during the minimum rent period, the HACM will calculate the total amount owed and divide it by 12 to arrive at a reasonable payback amount that the family will be required to pay to the HACM monthly in addition to the family's regular monthly rent payment to the owner. The family will be required to pay the increased amount until the arrears are paid in full to the HACM.~~

~~Minimum rent arrears that are less than \$25 will be required to be paid in full the first month following the end of the minimum rent period.~~

~~The minimum monthly amount for a repayment agreement incurred for minimum rent arrears is \$25.~~

~~The HACM will not enter into a repayment agreement that will take more than 12 months to pay off.~~

~~If the family goes into default on the repayment agreement for back rent incurred during a minimum~~

rent period, the HACM will reevaluate the family's financial situation and determine whether the family has the ability to pay the increased rent amount and if not, may reissue another repayment agreement.

**D. OWNER DEBTS TO THE HACM [24 CFR 982.453(b)]**

If the HACM determines that the owner has retained Housing Assistance Payments ~~or claim payments~~ the owner is not entitled to, the HACM may reclaim the amounts from future Housing Assistance Payments ~~or claim payments~~ owed to the owner for any units under contract.

If future Housing Assistance Payments ~~or claim payments~~ are insufficient to reclaim the amounts owed, the Housing Authority may take one or more of the following options:

- Require the owner to pay the amount in full within **thirty** (30) days.
- Enter into a payment agreement with the owner for the amount owed.
- Pursue collections through a collection agency ~~and execute a lien on the property.~~
- Restrict the owner from future participation.

**E. WRITING OFF DEBTS**

Debts will be written off if:

- The debtor's whereabouts are unknown and the debt is more than ~~fifteen years old~~ **three (3) years old.**
- A determination is made that the debtor is judgment proof.
- The debtor is deceased.
- **The debtor is confined to an institution indefinitely or for more than five (5) years.**
- The amount is less than ~~\$50~~ **\$5,000** and ~~is at least five years old~~ **the debtor cannot be located.**

## Chapter 19

### REVIEWS, HEARINGS, COMPLAINTS AND APPEALS

#### INTRODUCTION

The informal hearing requirements defined in HUD regulations are applicable to participating families who disagree with an action, decision, or inaction of the HACM. This chapter describes the policies, procedures and standards to be used when families disagree with a Housing Authority decision. The procedures and requirements are explained for preference denial meetings, informal reviews and hearings. It is the policy of the HACM to ensure that all families have the benefit of all protections due to them under the law, and the HACM responds promptly to complaints by families, or owners, staff or the public and investigates. Anonymous complaints are checked whenever possible.

#### A. COMPLAINTS TO THE HACM

The HACM will respond promptly to complaints from families, owners, employees, and members of the public. All complaints will be documented. The HACM may require that complaints other than Housing Quality Standards (HQS) violations be put in writing (HQS complaints may be reported by telephone).

The HACM review/hearing procedures will be provided to families in the briefing packet. (Complaint and Grievance Procedure)

##### Categories of Complaints

##### **Complaints from Families and Owners**

Complaints received from families or owners with an due to the action or inaction of the HACM or owner will be referred to the Eligibility Specialist. If a complaint is not resolved, it will be referred to the Director of Housing Assistance.

Complaints from Owners: If an owner disagrees with an action or inaction of the HACM or a family.

##### **Complaints from Staff**

If a staff person reports an owner or family either violating or not complying with program rules, the complaint will be referred to the Director of Housing Programs.

##### **Complaints from the General Public**

Complaints or referrals from persons in the community in regard to the HACM, a family or an owner will be referred to the Eligibility Specialist. If a complaint is not resolved, Director of Housing Programs.

All complaints will be referred to the Supervisor, and if not resolved at that level, then the Housing Choice Voucher Manager. The Housing Choice Voucher Manager will, when necessary, refer the complaint to the Housing Choice Voucher (HCV) Program Director.

Complaints will, where appropriate, be referred to law enforcement, the District Attorney, or other investigative entity for investigation.

#### B. PREFERENCE DENIALS

When the HACM denies a preference to an applicant, ~~and the applicant disagrees with the decision, the applicant is entitled to a meeting. This is different from an informal review or hearing. The person who made the decision to deny the preference, or any other HACM representative, may conduct the meeting. The meeting is limited only to the circumstances pertaining to the preference denial.~~ the family will be notified in writing of the specific reason for the denial and offered the opportunity for a meeting with Housing Authority staff to discuss the reasons for the denial and to dispute the HACM's decision.

The person who conducts the meeting will be the Eligibility Specialist or Director of Housing Programs or his or her designee.

**C. INFORMAL REVIEW PROCEDURES FOR APPLICANTS [24 CFR 982.54(d)(12), 982.554]**

Reviews are provided for applicants who are denied assistance before the effective date of the Housing Assistance Payment (HAP) Contract. The exception is that when an applicant is denied assistance for citizenship or eligible immigrant status, the applicant is entitled to an informal hearing.

When the HACM determines that an applicant is ineligible for the program, the family must be notified of their ineligibility in writing. The notice must contain:

- ~~• The reason(s) for the decision;~~
- ~~• That the applicant may request an informal review of the decision;~~
- ~~• Description of how to obtain an informal review and;~~
- The reason(s) they are ineligible;
- The procedure for requesting a review if the applicant does not agree with the decision; and
- The time limit for requesting a review.

When denying admission for criminal activity as shown by a criminal record, the Housing Authority will provide the subject of the record and the applicant with a copy of the criminal record upon which the decision to deny was based.

The HACM must provide applicants with the opportunity for an informal review of decisions denying:

- **Qualification for preference.**
- Listing on the HACM's waiting list ~~(excluding qualification for a preference).~~
- Issuance of a voucher.
- Participation in the program.
- Assistance under portability procedures.

Informal reviews are **not required** for established policies and procedures and HACM determinations such as:

- Discretionary administrative determinations by the HACM.
- General policy issues or class grievances.
- A determination of the family unit size under the HACM subsidy standards.
- Refusal to extend or suspend a voucher.
- A HACM determination not to grant approval of the tenancy.
- Determination that unit is not in compliance with HQS.
- Determination that unit is not in accordance with HQS due to family size or composition.

**Procedure for Informal Review**

A request from the applicant for an informal review must be received in writing by the close of the business day, no later than fourteen (14) calendar days from the date of the HACM's notification of denial of assistance. The informal review will be scheduled and held within a reasonable time the request is received.

After a review date is scheduled, the family may request to reschedule only upon showing "good cause," which is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. The HACM may require verification of such "good cause," and any verification and documentation that the HACM may request must be provided by the family or a review date will not be rescheduled.

If a family does not appear at a scheduled review at the time specified, or within 15 minutes of that time, and has not rescheduled the review in advance pursuant to the above paragraph, the family will be deemed to have withdrawn its request for informal review and the HACM decision will not be modified

The informal review may not be conducted by the person who made or approved the decision under review, nor a subordinate of such person. There will be a single reviewing officer.

The review may ~~can~~ be conducted by:

- A staff person who is at the management level or above.
- An independent contractor qualified by the HACM.
- An HACM employee
- An individual from outside the HACM.

A copy of the HACM's Complaint & Grievance Procedure will be mailed along with the Response to Request for an Informal Review.

The review may be conducted by mail and/or telephone if acceptable to both parties. A notice of the review findings will be provided in writing to the applicant within fourteen (14) business days after the review. It shall include the decision of the review officer, and an explanation of the reasons for the decision.

The applicant will be given the opportunity of presenting oral or written objections to the decision under review. Both the HACM and the family may present evidence and witnesses. The family may use an attorney or appropriate representative to assist them at its own expense.

All requests for a review, supporting documentation, and a copy of the final decision will be retained in the family's file.

**D. INFORMAL HEARING PROCEDURES [24 CFR 982.555(a-f), 982.54(d)(13)]**

A copy of the HACM's Complaint & Grievance Procedure will be mailed along with the Response to Request for an Informal Hearing.

The HACM must provide participants with the opportunity for an Informal Hearing for decisions related to any of the following HACM determinations:

When the HACM makes a decision regarding the eligibility and/or the amount of assistance, applicants and participants must be notified in writing. The HACM will give the family prompt



notice of such determinations which will include:

- The proposed action or decision of the HACM.
- The date the proposed action or decision will take place.
- The family's right to an explanation of the basis for the HACM's decision.
- The procedure for requesting a hearing if the family disputes the action or decision.
- The time limit for requesting the hearing.
- To whom the hearing request should be addressed.
- A copy of the HACM's hearing procedures.

The HACM hearing procedures will be provided to families in the briefing packet. When terminating assistance for criminal activity as shown by a criminal record, the Housing Authority will provide the subject of the record and the tenant/participant with a copy of the criminal record upon which the decision to terminate was based.

The HACM must provide participants with the opportunity for an informal hearing for decisions related to any of the following HACM determinations:

- Determination of the family's annual or adjusted income and the computation of the housing assistance payment.
- ~~Appropriate~~ Calculation of utility allowance used from schedule.
- Family unit size determination under HACM subsidy standards.
- ~~Determination that a Family is residing in a unit with more bedrooms than appropriate for the family unit under HACM subsidy standards~~
- ~~Determination to deny a family's request for an exception from the subsidy standards~~
- ~~Determination to terminate assistance for a participant family because of the family's action or failure to act (See 24 CFR 982.552)~~
- ~~A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under HACM policy and HUD rules.~~
- Non-citizen eligibility.
- Determination to terminate a family's FSS Contract, withhold supportive services, or propose forfeiture of the family's escrow account.

~~For the decisions based on items 1-3 above, HACM must notify the family that they may ask for an explanation of the basis of the determination and if they do not agree with the determination, they may request an informal hearing.~~

~~In the cases described on items 4-8 above, HACM must give the family prompt written notice that they may request an informal hearing. The notice must contain:~~

- ~~A brief statement of reasons for the decision~~
- ~~That if the family does not agree with the decision the family may request an informal hearing on the decision and;~~
- ~~Deadline for the family to request an informal hearing, which must be received in writing by the close of business day, no later than fourteen (14) calendar days from the date of the HACM's notification of termination of assistance.~~

Informal hearings are ***not required*** for established policies and procedures and HACM determinations such as:

- Discretionary administrative determinations by the HACM.
- General policy issues or class grievances.
- Establishment of the HACM schedule of utility allowances for families in the program.
- A HACM determination not to approve an extension or suspension of a voucher term.
- A HACM determination not to approve a unit or lease. Tenancy ?
- A HACM determination that an assisted unit is not in compliance with HQS (However, the HACM must provide the opportunity for an informal hearing for a decision to terminate assistance for a family breach of HQS caused the the family because that is a family obligation determination).
- A HACM determination that the unit is not in accordance with HQS because of the family size.
- A HACM determination to exercise or not exercise any right or remedy against the owner under a HAP contract.

### **Notification of Hearing and hearing procedures**

It is the HACM's objective to resolve disputes at the lowest level possible, and to make every effort to avoid the most severe remedies. However, if this is not possible, the HACM will ensure that applicants and participants will receive all of the protections and rights afforded by the law and the regulations.

When the HACM receives a request for an informal hearing, a hearing shall be scheduled within fourteen (14) days. The notification of hearing will contain:

- The date and time of the hearing;
- The location where the hearing will be held;
- The family's right to bring evidence, witnesses, legal or other representation at the family's expense;
- The right to examine at the HACM office any documents that are directly relevant to the hearing and at the family's expense, to obtain a copy of any such documents prior to the hearing—view any documents or evidence in the possession of the HACM upon which the HACM based the proposed action and, at the family's expense, to obtain a copy of such documents prior to the hearing. (HACM charges \$.35 per page for copies, and this fee, must be paid before the copy/ies will be provided to the family). Either of these requests must be made no later than 4 calendar days before the scheduled hearing. Requests for such documents or evidence must be received no later than five (5) business days before the hearing date; and
- A notice to the family that the HACM will request a copy of any documents or evidence the family will use at the hearing at HACM's expense. No documents may be presented which have not been provided to the other party before the hearing if requested by the other party. Documents includes records and statements. Requests for such documents or evidence must be received no later than five (5) business days before the hearing date.

### **The HACM's Hearing Procedures**

After a hearing date is agreed to, the family may request to reschedule only upon showing “good cause,” which is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

If a family does not appear at a scheduled hearing and has not rescheduled the hearing in advance, the family must contact the HACM within twenty-four (24) hours, excluding weekends and holidays. The HACM will reschedule the hearing only if the family can show good cause for the failure to appear.

Families have the right to:

- Present written or oral objections to the HACM's determination.
- Examine the documents in the file which are the basis for the HACM's action, and all documents submitted to the hearing officer.
- Copy any relevant documents at their expense.
- Present any information or witnesses pertinent to the issue of the hearing
- Request that HACM staff be available or present at the hearing to answer questions pertinent to the case
- Be represented by legal counsel, advocate, or other designated representative at their own expense. In such case, the family shall notify HACM at least two (2) business days before the scheduled hearing of their election to be represented by counsel
- If the family requests copies of documents relevant to the hearing, the HACM will make the copies for the family and assess a charge of \$.35 per copy. In no case will the family be allowed to remove the file from the HACM's office.

In addition to other rights contained in this chapter, the HACM has a right to:

- Present evidence and any information pertinent to the issue of the hearing.
- Be notified if the family intends to be represented by legal counsel, advocate, or another party.
- Examine and copy any documents to be used by the family prior to the hearing.
- Have ~~its~~ their attorney present.
- Have staff persons and other witnesses familiar with the case present.

The informal hearing shall be conducted by the hearing officer appointed by the HACM who is neither the person who made or approved the decision, nor a subordinate of that person. The HACM ~~may appoint an employee or an individual from outside the HACM to conduct informal hearings~~ appoints hearing officers who are:

- A HACM supervisor level or above.
- Managers from other HACM's.
- Professional mediators or arbitrators.
- HACM Management.
- An independent contractor qualified by the HACM.

The hearing shall concern only the issues for which the family has received the opportunity for hearing. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The Hearing Officer may record the proceedings on tape solely to assist in recounting the facts and statements for his/her final determination. The audiotape is the Hearing Officer's, and not a HACM document or recording and is erased once he/she renders his/her findings.

No documents may be presented which have not been provided to the other party before the hearing

if requested by the other party. "Documents" includes records and regulations.

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 fails to appear for the hearing misses an appointment or deadline ordered by the hearing officer, the action of the HACM will be affirmed by the Hearing Officer shall take effect and another hearing will not be granted.

The hearing officer will determine whether the action, inaction or decision of the Housing Authority is legal in accordance with HUD regulations and this Administrative Plan based upon the evidence and testimony provided at the hearing. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

A notice of the hearing findings shall be provided in writing to the HACM and the family within fourteen (14) calendar days and shall include:

- A brief statement of the reasons for the decision; A clear summary of the decision and reasons for the decision;
- If the decision involves money owed, the amount owed; and
- The date the decision goes into effect

The HACM is not bound by hearing decisions which:

- Concern matters in which the HACM is not required to provide an opportunity for a hearing.
- Conflict with or contradict HUD regulations or requirements.
- Conflict with or contradict Federal, State or local laws.
- Exceed the authority of the person conducting the hearing.

If the Hearing Officer affirms termination of the participant, the Hearing Officer will forward his/her hearing findings to the HACM for review. The HACM will forward the hearing findings along with Form 71, "Notice of Final Decision of the Matter."

The HACM shall send a letter to the participant if it determines the HACM is not bound by the hearing officer's determination within 10 business days fourteen (14) business days. The letter shall include the HACM's reasons for the decision to not be bound.

If the Hearing Officer determines that the family is not to be terminated from the program, but stipulates that certain actions must be taken by the family in order to avoid termination and the family is in non-compliance, the Hearing Officer has a right to review the case again and to terminate the family without the right to further informal hearing.

All requests for a hearing, supporting documentation, and a copy of the final decision will be retained in the family's file.

#### **E. EXTENUATING CIRCUMSTANCES REGARDING DENIALS/TERMINATIONS DUE TO MISSED APPOINTMENTS**

A request from the family for an Informal Hearing must be received in writing by the close of the business day, no later than fourteen (14) calendar days from the date of the HACM's notification of termination of assistance. The informal hearing will be scheduled and held within a reasonable time after the request is received.

After a hearing date is scheduled, the family may request to reschedule only upon showing "good cause," which is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. The HACM may require verification of such "good cause," and any verification and documentation that the HACM may request must be provided by the family or a review date will not be rescheduled.

If a family does not appear at a scheduled hearing at the time specified, or within 15 minutes of that time, and has not rescheduled the hearing in advance pursuant to the above paragraph, the family will be deemed to have withdrawn its request for informal hearing and the HACM decision will not be modified.

The informal hearing may not be conducted by the person who made or approved the decision, nor a subordinate of such person.

**F. HEARING AND APPEAL PROVISIONS FOR "RESTRICTIONS ON ASSISTANCE TO NON- CITIZENS" [24 CFR PART 5, SUBPART E]**

Assistance to the family may not be delayed, denied or terminated on the basis of immigration status ~~of a family member if~~ at any time prior to the receipt of the decision on the U.S. Citizenship and Immigration Services (USCIS) appeal.

1. ~~The primary and secondary verification of any immigration documents that were timely submitted has not been completed;~~
2. ~~The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;~~
3. ~~The INS appeals process under 5.514(e) has not been concluded;~~
4. ~~Assistance is prorated in accordance with 5.520; or~~
5. ~~Deferral of termination of assistance is granted.~~

Assistance to a family may not be terminated or denied while the HACM hearing is pending but assistance to an applicant may be delayed pending the HACM hearing.

**~~INS Determination of Ineligibility~~ U.S. Citizenship and Immigration Services Determination of Ineligibility**

If a family member claims to be an eligible immigrant and the ~~INS SAVE System~~ U.S. Citizenship and Immigration Services (USCIS) and a manual search do not verify the claim, the HACM notifies the applicant or participant within ten (10) days of their right to appeal to the USCIS within thirty (30) days or to request an informal hearing with the HACM either in lieu of or subsequent to the ~~USCIS-INS~~ appeal.

If the family appeals to the ~~INS~~ USCIS, they must give the HACM a copy of the appeal and proof of mailing or the HACM may proceed to deny or terminate. The time period to request an appeal may be extended by the HACM for good cause.

The request for a HACM hearing must be ~~received in writing by the close of business day~~ made within ~~no later than~~ fourteen (14) ~~calendar~~ days ~~from date of the HACM's notification of receipt of the notice offering the hearing or, if an appeal was made to the USCIS, within fourteen (14) days of receipt of that notice.~~

After receipt of a request for an informal hearing, the hearing is conducted as described in this chapter for both applicants and participants. If the hearing officer decides that the individual is not eligible and there are no other eligible family members, the HACM will:

- Deny the applicant family
- Defer termination if the family is a participant and qualifies for deferral
- Terminate the participant if the family does not qualify for deferral

If there are eligible members in the family, the HACM will offer to pro-rate assistance or give the family the option to remove the ineligible members.

All other complaints related to eligible citizen/immigrant status:

- If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be denied or terminated for failure to provide.
- Participants whose termination is carried out after temporary deferral may not request a hearing since they had an opportunity for a hearing prior to the termination.
- Participants whose assistance is prorated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of Tenant Rent (TR) and Total Tenant Payment (TTP).
- Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

#### **G. MITIGATING CIRCUMSTANCES FOR APPLICANTS/PARTICIPANTS WITH DISABILITIES [24CFR 982.204, 982.552(c)]**

When applicants are denied placement on the waiting list, ~~or denied admittance to the program,~~ or the HACM is terminating assistance, the family ~~will~~ ~~may~~ be informed that presence of a disability may be considered as a mitigating circumstance during the informal review process.

~~Examples of mitigating circumstances are: a) A person with a cognitive disorder may not have understood the requirement to report increases in income; b) A person may not understand the need to make regular repayments on a promissory note; c) Minor criminal records for public drunkenness may be due to medication; prior incarcerations for being disorderly may be emotional disorder.~~

## Chapter 20

## SPECIAL HOUSING TYPES

[24 CFR 982.601]

**INTRODUCTION**

The HACM will permit ~~may consider~~ the use of special housing types in its program ~~only if the applicant/participant can demonstrate that it is needed as a reasonable accommodation for a person with a disability.~~ The exception to this is Shared Housing and Single Room Occupancy (SRO) in which the HACM will permit these types of special housing for all participants. Acceptable demonstration will include documentation from one or more knowledgeable professionals who are familiar with the applicant/participant and or the type of special housing requested as accommodation.

Depending on the local need, funding availability and that the applicant/participant can demonstrate this would be the only way the family could obtain assistance.

The HACM will not set aside any program funding for special housing types, or for a special housing type unless the HACM receives special funding for such programs. A family may choose whether to rent housing that qualifies as a special housing type or to rent other eligible housing in accordance with requirements of the program.

**Verification of Need for Reasonable Accommodation**

The use of special housing types would be made available if the applicant/participant can demonstrate that it is needed as a reasonable accommodation for a person with a disability. ~~An example of acceptable documentation as verification of the need for reasonable accommodation would be a letter to the HACM from one or more knowledgeable professionals to the HACM~~ describing how the special housing type requested provides the accommodation of which the person is in need. The request and documentation will be reviewed by the ~~Housing Choice Voucher Director~~ designated staff and a written response stating approval or disapproval will be sent to the applicant/participant within fourteen (14) ~~business~~ days of receipt of the request.

A copy of the HACM's response with supporting documentation will be maintained in the applicant/participant's file. The requested housing type must be approvable by all other HUD standards and HQS requirements in accordance with 24 CFR 982.

**A. SINGLE ROOM OCCUPANCY [24 CFR 982.602, 982-603]**

~~Only a single person may reside in a SRO housing unit.~~

- ~~• Payment standard used is 75% of the studio payment standard.~~
- ~~• Utility allowance is 75% of the studio utility allowance.~~

~~All other criteria, including HQS for SRO units, are explained 24 CFR 982.602.~~

The HACM will use a separate lease and Housing Assistance Payment contract for each assisted person residing in a Single Room Occupancy (SRO) unit. At this time the HACM is not assisting any SRO units.

**B. CONGREGATE HOUSING [24 CFR 982.606]**

An elderly person or a person with disabilities may reside in a congregate housing unit.

The HACM may approve a family member or live-in aide to reside with the elderly person or person with disabilities.

The HACM will approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

**Congregate Housing Lease and HAP Contract [24 CFR 982.607]**

For congregate housing there will be a separate lease and Housing Assistance Payment (HAP) contract for each assisted family.

Unless there is a live-in aide, the payment standard for a family that resides in a congregate housing unit is the zero-bedroom payment standard on the HACM's payment standard schedule.

However, if there are two or more rooms in the unit (not including kitchen or sanitary facilities), the payment standard for a family that resides in a congregate housing unit is the one bedroom payment standard.

If there is a live-in aide, the live-in aide will be counted in determining the family unit size.

**Housing Quality Standards**

The HACM will ensure that all congregate housing units approved for the program are in compliance with all of the HQS for congregate housing as regulated in 24 CFR 982.609.

**C. GROUP HOMES [24 CFR 982.610, 982.612]**

A group home must be licensed, certified, or otherwise approved in writing by the State, or the State's licensing department.

An elderly person or a person with disabilities may reside in a State-approved group home. If approved by the HACM, a live-in aide may reside with a person with disabilities.

The HACM must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. Except for a live-in aide, all residents of a group home must be elderly persons or persons with disabilities.

The HACM will not approve assistance for a person to live in a group home if file documentation indicates that the person is in need of continual medical or nursing care.

No more than twelve persons may reside in a group home. This limit covers all persons who reside in the unit, including assisted and unassisted residents and any live-in aide.

**Group Home Lease and HAP Contract [24 CFR 982.611]**

There will be a separate HAP contract and lease for each assisted person living in a group home. For a group home the term "pro-rata portion" means that which is derived by dividing the number of persons in the assisted household by the total number of residents (assisted and unassisted) residing in the group home. The number of persons in the assisted household equals one assisted person plus any HACM-approved live-in Aide.

**Group Home Rent and HAP Contract [24 CFR 982.613]**

The rent to owner for an assisted person may not exceed the pro-rata portion of the reasonable rent



for the group home.

The reasonable rent for a group home is determined in accordance with 982.503. In determining reasonable rent the HACM will consider whether sanitary facilities, and facilities for food preparation and service, are common facilities or private.

### **Maximum Subsidy**

Unless there is a live-in aide, the family unit size is one bedroom. If there is a live-in aide, the live-in aide will be counted in determining the family unit size.

The payment standard for a person who resides in a group home is the lower of the payment standard for the family unit size; or the pro-rata portion of the payment standard for the group home size.

### **Utility Allowance**

The utility allowance for each assisted person residing in a group home is the pro-rata portion of the utility allowance for the group home unit size.

### **Housing Quality Standards**

The HACM will ensure that all group home units approved for the program are in compliance with all of the HQS for group homes as regulated in 24 CFR 982.614.

## **D. SHARED HOUSING [24 CFR 982.615]**

### **Definitions**

For purposes of Voucher Shared Housing the following definitions apply:

- *Common Space:* Space available for use by the assisted family and other occupants of the unit.
- *Individual Lease Shared Housing:* The type of shared housing in which the HACM enters into a separate housing voucher contract for each assisted family residing in a shared housing unit.
- *Private Space:* The portion of the dwelling unit that is for the exclusive use of an assisted family.
- *Shared Housing:* A housing unit occupied by two or more families consisting of common space for shared use by the occupants of the units and (except in the case of a shared one-bedroom unit) separate private space for each assisted family.

### **Occupancy of a Shared Housing Unit**

Participation in Shared Housing is voluntary on the part of the participant and the HACM has not set aside any vouchers restricted to Shared Housing.

- ~~Persons who are not assisted under the voucher program may reside in a Shared Housing unit.~~

- Except for a one bedroom unit, the owner of a Shared Housing unit may reside in the unit, and a resident owner may enter into a voucher contract with the HACM. However, a voucher holder may not be related to a resident owner.
- One or more assisted families may reside in a shared housing unit.
- The number of bedrooms in the private space of an assisted family initially must be the same as the number stated on the family's voucher. *Note: Two separate families with two separate vouchers MAY NOT share a one bedroom unit. A one bedroom unit does not qualify for Shared Housing.*

An assisted family may reside in shared housing. In shared housing, an assisted family may share a unit with another resident or residents of a unit. The unit may be a house or an apartment.

Other persons who are assisted or not assisted under the tenant-based program may reside in a shared housing unit. The owner of a shared housing unit may reside in the unit.

A resident owner may enter into a HAP contract with the HACM. However, housing assistance may not be paid on behalf of an owner. The HACM will not approve assistance for a person or family that is related by blood or marriage to a resident owner.

The HACM may approve a live-in aide to reside with a family in order to care for a person with a disability. The HACM must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

The HACM will not approve shared housing assistance for a family if the owner resides in the unit and is related by blood and/or marriage to the assisted family. Although other regulations permit the leasing of a rental unit from certain relatives when needed as a reasonable accommodation, the U.S. Department of Housing and Urban Development (HUD) has not established a similarly regulatory provision for shared housing as defined in 24 CFR 982.306.

There will be a separate housing assistance payment contract and lease for each assisted family residing in a shared housing unit.

### **Rent and HAP Contract**

For shared housing, the term “pro-rata portion” means the ratio derived by dividing the number of bedrooms in the private space available for occupancy by a family by the total number of bedrooms in the unit. For example, for a family entitled to occupy three bedrooms in a five bedroom unit, the ratio would be 3/5.

The rent to owner for the family may not exceed the pro-rata portion of the reasonable rent for the shared housing dwelling unit. The reasonable rent must be in accordance with the guidelines set in the “Owner Rents, Rent Reasonableness, and Payment Standards” in this chapter.

### **Maximum Subsidy**

For a family that resides in a shared housing unit, the payment standard is the lower of the payment standard amount on the HACM payment standard schedule for the family unit size or the pro-rata portion of the payment standard amount on the HACM payment standard for the shared housing unit size.

If the HACM approves a live-in aide, the live-in aide will be counted in determining the family unit size.

**Utility Allowance**

The utility allowance for an assisted family living in shared housing is the pro-rata portion of the utility allowance for the shared housing unit.

**Housing Quality Standards**

The HACM will ensure that all shared housing units approved for the program are in compliance with all of the Housing Quality Standards (HQS) for shared housing as regulated in 24 CFR 982.618.

**E. COOPERATIVE HOUSING [24 CFR 982.619]**

The HACM will approve a family living in cooperative housing if it is determined that assistance under the program will help maintain affordability of the cooperative unit for low-income families. The HACM will not approve assistance for a family in cooperative housing until the HACM has also determined that the cooperative has adopted requirements to maintain continued affordability for low-income families after transfer of a cooperative member's interest in a cooperative unit (such as a sale of the resident's share in a cooperative corporation).

The reasonable rent in cooperative housing is determined in accordance with “Owner Rents, Rent Reasonableness, and Payment Standards” chapter. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

The carrying charge consists of the amount assessed to the member by the cooperative for occupancy of the housing. It includes the member's share of the cooperatives debt service, operating expenses, and necessary payments to cooperative reserve funds. However, the carrying charge does not include down-payments or other payments to purchase the cooperative unit, or to amortize a loan to the family for this purpose. Gross rent is the carrying charge plus any utility.

For a cooperative, rent adjustments are applied to the carrying charge as determined in “Owner Rents, Rent Reasonableness, and Payment Standards” chapter.

The lease and other appropriate documents will stipulate that the monthly carrying charge is subject to Housing Choice Voucher limitations on rent to owner. The housing assistance payment will be determined in accordance with the guidelines in “Owner Rents, Rent Reasonableness, and Payment Standards” chapter.

The HACM may approve a live-in aide to reside with the family to care for a person with disabilities. The HACM will approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. If the HACM approves a live-in aide, the live-in aide will be counted when determining the family unit size.

**Housing Quality Standards**

The HACM will ensure that all cooperative housing units approved for the program are in compliance with all of the HQS outlined in the “Housing Quality Standards and Inspections” chapter, and regulated by 24 CFR 982.401.

**F. MANUFACTURED HOMES [24 CFR 982.620]**

The HACM will permit a family to lease a manufactured home and space with assistance under the program. The HACM will ~~not~~ provide assistance for a family that owns the manufactured home and leases only the space.

**Housing Quality Standards [24 CFR 982.621]**

A manufactured home must meet all the HQS requirements outlined in **Chapter 10**, "Housing Quality Standards and Inspections" ~~chapter~~ and regulated by 24 CFR 982.401. In addition the manufactured home also must meet the following requirements:

- A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage.
- A manufactured home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist wind overturning and sliding.

**Manufactured Home Space Rental [24 CFR 982.622]**

~~The HACM does not provide assistance to families who own the manufactured home but need to lease space~~

~~Rent to owner for a manufactured home space will include payment for maintenance services that the owner must provide to the tenant under the lease for the space.~~

~~Rent to owner does not include the cost of utilities and trash collection for the manufactured home. However, the owner may charge the family a separate fee for the cost of utilities or trash collection provided by the owner.~~

**Reasonable Rent**

~~During the assisted tenancy, the rent to owner for the manufactured home space may not exceed a reasonable rent as determined by the HACM.~~

~~The HACM will not approve a lease for a manufactured home space until the Housing Authority has determined that the initial rent to owner for the space is a reasonable rent.~~

~~At least annually during the assisted tenancy, the HACM will redetermine that the rent is reasonable.~~

~~The HACM will determine whether the rent to owner for a manufactured home space is a reasonable rent in comparison to rents for other comparable manufactured home spaces. The HACM will consider the size and location of the space and any services and maintenance provided by the owner in accordance with the lease.~~

~~By accepting each monthly housing assistance payment from the HACM, the owner of the manufactured home space certifies that the rent to owner for the space is not more than rent charged by the owner for unassisted rentals of comparable spaces in the same manufactured home park or elsewhere. If requested by the HACM, the owner must provide the HACM information on rents for other manufactured home space.~~

**Housing Assistance Payments for Manufactured Home Space [24 CFR 982.623] HAP for the Voucher Tenancy**

~~There is a separate FMR for a family renting a manufactured home space. The payment standard is used to calculate the monthly housing assistance payment for a family. The FMR for rental of a manufactured home space is generally 40% of the published FMR for a two-bedroom unit.~~

### **Subsidy Calculation for the Voucher Program**

During the term of a voucher tenancy, the amount of the monthly housing assistance payment for a family will equal the lesser of the payment standard minus the total tenant payment, or the rent paid for rental of the real property on which the manufactured home owned by the family is located (the space rent) minus the total tenant payment.

The space rent is the sum of the following as determined by the HACM:

- Rent to owner for the manufactured home space
- Owner maintenance and management charges for the space
- The utility allowance for tenant paid utilities

**Utility Allowance Schedule for Manufactured Home Space Rental [24 CFR 982.624]** The HACM will establish utility allowances for manufactured home space rentals. During the initial lease term only, the allowances will include a reasonable amount for utility hook-up charges payable by the family, if the family actually incurs the expenses because of a move.

Allowances for utility hook-up charges do not apply to a family that leases a manufactured home space in place.

Utility allowances for manufactured home space will not be applied to cover the costs of digging a well or installation of a septic system.

## **G. ASSISTED LIVING UNITS (PIH NOTICE 2012-40)**

### **Occupancy**

An assisted family may reside in an assisted living unit. An assisted living facility is a public facility, proprietary facility, or facility of private nonprofit corporation that:

- Is licensed and regulated by the State (or if there is no State law providing for such licensing and regulation by the State), by the municipality or other political subdivision in which the facility is located;
- Makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money,
  - using the telephone, or performing light or heavy housework, and which make available to residents home health care services such as nursing and therapy; and
- Provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.

Assisted living facilities may be referred to as residential care facilities, adult care facilities, congregate care facilities or group homes as long as they meet the requirements noted above. Assisted living facilities are designed for residents who have the physical ability to live independently but need assistance with some activities of daily living such as personal care, transportation, meals, laundry, medication monitoring, security, and housekeeping. A person residing in an assisted living unit must not require continual medical or nursing care.

**Rent**

Section 302 of the Section 202 Supportive Housing for the Elderly Act of 2010 (Public Law 111-372).

*Monthly Assistance Payment under Rental Assistance* amends section 8(o)(18)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(18)(B)(iii) to allow a HACM to require a family to pay more than 40 percent (40%) of its monthly adjusted income for a unit in an assisted unit facility if the amount or percentage is reasonable given the services and amenities provided by the assisted living facility and as the Secretary deems appropriate.

A HACM may submit a request for a waiver of 24 CFR 982.508 and 982.305(a)(5) through the waiver process under 24 CFR 5.110 to require a family to pay more than 40 percent (40%) of its adjusted monthly income for an assisted unit, in order to allow the family to lease an assisted living unit that would otherwise be disapproved because the family share would exceed 40 percent (40%) of monthly adjusted income. HUD will review such requests on a case-by-case basis and may grant the waiver if HUD determines the request demonstrates good cause.

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## Chapter 21

### FAMILY UNIFICATION PROGRAM (FUP) & INDEPENDENT LIVING SKILLS PROGRAM (ILSP)

#### INTRODUCTION

The Family Unification Program (FUP) is designed to re-unite families that because of the lack of decent and affordable housing have caused a separation of the family members, or the separation is imminent. The program is administered through the Human Services Agency (HSA) and the Independent Living Skills Program (ILSP), and supported through the provisions of housing, by the Housing Authority of the County of Merced (HACM).

#### A. ISSUANCE OF VOUCHERS FOR FAMILY PARTICIPATION

- Specific allocations of Housing Choice Vouchers (HCV) are designated for the FUP and the ILSP. The project will be coded to indicate exclusive use for the FUP and ILSP. The FUP Vouchers are allocated as Targeted Funding. The ILSP families are given a local preference.
- There is a limit of families admitted under the FUP targeted funding, according to the allocated number by the Department of Housing & Urban Development (HUD).
- Eligibility for assistance in the FUP and ILSP is determined by designated agency or using the HUD admissions criteria. HCV eligibility criteria will not differ from traditional criteria and will be verified by the HACM, except in certain cases indicated below under *Selection and Exceptions*.
- HSA, ILSP, and the HACM may designate liaison personnel to deal with the day-to-day matters involving the programs.
- HSA and ILSP will, through close coordination with the HACM, furnish the name, or names of the family or families, selected to receive a HCV voucher. The initial announcement of selection, to the HACM, can be verbally transmitted but must be verified in writing on HSA referral form or ILSP stationary to the HACM, within 72 hours of the verbal notification. An HCV application and an eligibility packet will be completed by the family with the help of HSA or ILSP staff and will be attached to the written referral verification.
- This HACM will continually update the HSA Liaison Person and the liaison person for ILSP as to the extent of utilization of the designated FUP Vouchers, so as not to exceed the designated number of vouchers within the program.

#### B. SELECTION OF FAMILIES AND EXCEPTIONS

Selection of the designated family/families for assistance will be generally handled in accordance with current policy as established in this Administrative Plan, with the following exceptions:

- If the HCV waiting list is closed, it will be reopened for acceptance of FUP/ILSP applications only. FUP/ILSP applications will be marked and listed for this funding program.
- HSA and ILSP will interview and review each family's case before being referred to the HACM for participation in programs.
- HSA will monitor each family under their program for a minimum of six (6) months once subsidy has begun for the family.
- HSA will be responsible to disclose to the HACM any information regarding family member's criminal and illegal drug activity.



The HACM may accept FUP, families referred by HSA, who have had within the last 3 years illegal drug activity, violent criminal activity, or criminal activity, as long as the family is meeting the HSA criteria and HACM's criteria under the FUP. The exception are families in which a member is subject to a lifetime sex offender registration requirement or has been a sex offender, or in which a member was evicted in the last three years from federally assisted housing for drug crimes.

Violence issues and criminal activity issues will be reviewed on a case-by-case basis by the HCV Department. The HACM will make determinations based on the health, safety, and peaceful enjoyment of residents and other HUD criteria.

Note: Families referred by the ILSP Program come under the same eligibility criteria for illegal drugs, criminal history, as stated in previous chapters of this administration plan. The above paragraphs and paragraphs below refer only to families referred by HSA, unless otherwise indicated.

- HSA will be responsible for obtaining a clean drug test at least 30 days from the FUP family member prior to FUP application being submitted for those families who are under Child Protective Services (CPS) monitoring due to illegal drug activity.
- HSA will be responsible for the family enrolling in drug diversion classes, alcohol rehabilitation classes and anger management classes, if the case remains open with their department.
- HSA will notify the HACM when the family's case has closed with CPS within 5 business days of occurrence.
- HSA will notify HACM when any family composition or income changes take place with the removal of a child or adult through CPS within 5 business days of occurrence, for families where the change is at least of 30 days or more duration.
- HACM has the right to refuse the additional family member due to previous illegal drug activity or criminal activity or other eligibility criteria as indicated in this Plan. HACM may request anger management classes or drug and/or alcohol rehabilitation classes in order for the family member to be added.
- All names of families referred to the HACM by HSA will be compared with those families already on the HCV waiting list. Any family on the HACM's HCV waiting list that matches with the HSA's list must be assisted in order of their position on the waiting list in accordance with HACM admission policies. All waiting list preferences will apply.
- FUP families currently on the waiting list will always have priority over those families referred by HSA who are not on the waiting list. (This does not pertain to ILSP families.)
- Applicants for the FUP/ILSP will be assisted by the HACM with housing assistance only when a FUP Voucher is available. All other FUP/ILSP applicants will remain on the FUP waiting list by order of date and time.
- Client file folders will be marked for immediate visual identification.
- Computer system will include "Family Unification" as Program Feature for tracking purposes.
- FUP Families cannot take their voucher to another PHA jurisdiction at the time they receive their initial voucher until one year after participation in the HCV Program, and completed their HSA Plan, or ILSP Plan. The HSA family also must transfer to a PHA that administers a FUP Program. The ILSP family may transfer to another jurisdiction that does not administer a FUP Program.

### C. **SPLIT OF HOUSEHOLD**

- Any split of family members in the household will result in the FUP Voucher staying with the adult family member who retains the children.

- If the children are split between two adult household members, the HACM will make the final decision of which family shall keep the FUP Voucher, based on the criteria set forth in this administrative plan. Another voucher will NOT be issued to the remaining family.
- In the case all children are taken from the home through CPS, the adult remaining in the home may keep the voucher as long as they adhere to all the rules and regulations of the HCV Program, including advising the HACM of the removal of the children from the home in the time allotted. At the time of the annual re-examination, the family will receive a smaller payment standard according to the current size of the family.

**D. SUPPORTIVE SERVICES**

In addition to the supportive services that the HACM will provide:

- FUP families will receive in-home monitoring off and on while the case remains open with CPS.
- ILSP families will receive supportive services from the ILSP program through their close monitoring processes while the case remains open.

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## Chapter 22

### FAMILY SELF-SUFFICIENCY PROGRAM

**A. PROGRAM OBJECTIVE**

The objective of this Housing Authority of the County of Merced (HACM) Family Self-Sufficiency (FSS) program is to assist low-income families in becoming economically independent of government assistance. This objective is met through the integration of the Housing Choice Voucher (HCV) Existing Housing Assistance Payments (HAP) Program with other public and private benefit programs to meet the specific self-sufficiency needs of low-income families. Components of the FSS Program include job development and training, personal and career counseling, childcare, transportation, and housing.

**B. PROGRAM COORDINATION**

The HACM's Self-Sufficiency Coordinator is responsible for the day-to-day operations of the Program. The Coordinator works closely with the Program Coordinating Committee (PCC), which consists of representatives from local agencies and businesses that assist in carrying forth the objectives of the Program.

**C. ELIGIBILITY FOR PARTICIPATION**

In addition to meeting Section 8 Housing Choice Voucher Program Participant requirements, prospective FSS participants must also meet the following criteria:

1. Effective the date of participation in the FSS Program, live within the HACM's jurisdiction for a minimum of 12 months;
  - o Exceptions are: job opportunities in other areas, education or illness in family. Verification required.
2. Agree to cooperate with all FSS program requirements, including case management;
3. Agree to follow their Action Plan, developed in consultation with the Self-Sufficiency Coordinator, in meeting their individual plan to become self-sufficient.

**D. OUTREACH EFFORTS**

This HACM will attempt to utilize the following methods to notify current HCV certificate and voucher program participants of the availability and advantages of participating in the FSS Program:

1. Written notification to all existing program participants.
2. Mail outs approximately 3 months to all existing program participants.
3. Written notification to current participants from another housing authority's jurisdiction who are utilizing the portability feature of the Section 8 certificate and voucher programs and who are relocating to the HACM's jurisdiction.
4. Brochures provided to current program participants during their annual reexamination interview.

**E. PRIORITIZATION OF APPLICANTS**

FSS applicants will be prioritized in the following order:

1. The date and time in which the preliminary application is received.

2. The length of time the applicant has been a program participant in the ~~Section 8~~ Housing Choice Voucher Program.
3. For up to 50% of the applicants who are admitted to the FSS Program, the HACM may assist any applicant without regard to the prioritization method for the following families:

HCV Existing Program participants who are currently enrolled in any one of the following educational programs: GAIN, ROP, Community Colleges, State Colleges, or other job training programs designed to prepare a participant for a specific career.

**F. DEVELOPMENT OF ACTION PLANS**

Each FSS participant shall sign a FSS Contract of Participation and complete an individual Action Plan within 30 days of acceptance into the FSS Program. The Action Plan shall be developed in consultation with the Self-Sufficiency coordinator and shall outline the specific goals and objectives necessary for the family to achieve economic self-sufficiency.

**G. PORTABILITY**

Any program participant selected for the FSS Program who is an incoming portable shall be absorbed by this HACM.

Current participants in the FSS Program may utilize the HCV's portability feature only if the family has been a participant of the FSS program for at least 12 months.

FSS participants requesting to utilize the portability feature of the HCV Program shall be advised of the following options available to both the program participant and the receiving Housing Authority:

1. The FSS participant can request to remain in the FSS program as long as the distance from the new location would not hinder the participant's ability to meet their contractual obligations under the FSS Program.
2. The receiving Housing Authority can elect to absorb the FSS participant into their program, if such a program is available in the receiving Housing Authority's jurisdiction.
3. The FSS program participant can request to be released from the FSS Contract of Participation and relinquish all funds accumulated in the participant's escrow account.

**H. PROGRAM MONITORING**

Participants shall meet with the Self-Sufficiency Coordinator as often as necessary to evaluate progress towards goals and objectives listed in the Action Plan. The Coordinator will assist participants in linking up to available services. Participation in the FSS Program shall continue so long as the family fulfills their FSS contract and the family meets all eligibility requirements relative to the Section 8 Program.

**I. FSS PROGRAM TERMINATION**

Self-Sufficiency participants who breach their FSS contract and fail to work towards the goals and objectives of their individual Action Plan may be terminated from further participation in the FSS Program. In the case of FSS program termination, the family's Section 8 certificate or voucher will not be terminated as long as they are eligible for the Section 8 Program.

If an FSS participant violates FSS guidelines as set forth in the FSS Contract of Participation and is terminated from the FSS Program, grievance procedures for informal hearings as outlined in the

Administration Plan apply.

**J. PROGRAM COORDINATING COMMITTEE**

The FSS Program Coordinating Committee ~~will~~ **may** consist of the local GAIN, Private Industry Department, Human Services Agency, Employment Department, Legal Services, Community Action Agency, Merced College, Merced Adult School, Regional Occupational Program, a FSS participant, City of Merced elected official and other appropriate agencies. This committee will meet quarterly.

**K. ESCROW ACCOUNTS**

The HACM will establish individual escrow accounts for FSS families. Internal reporting procedures assure continual coordination between the FSS Program Coordinator, **HCV Director** Director of Housing Programs, and Financial Officer. All FSS participants are told they must report all changes of income and family composition immediately.

The reporting requirements and the handling of the escrow accounts are outlined below:

1. When a new participant enters into a Contract of Participation, the FSS Coordinator will forward applicable information to the assigned FSS HCV eligibility specialist, who will contact the Finance Department by memo.
2. The HCV Department will complete the Contract of Participation with the income information and return this document to the FSS Coordinator.
3. The Board of Commissioners' Resolution #93-42 specifically states that at least once annually the FSS participants will receive a report of their escrow account balances. The Finance Department will be responsible for verification of escrow account amounts, and on a quarterly basis a report of escrow account balances will be provided to the FSS Coordinator, and mailed to each FSS participant who has an escrow account balance.
4. The Board of Commissioners' Resolution #93-43 states that the escrow account may not be accessed by the FSS participant until the Contract of Participation is completed and the individual has successfully completed the FSS Program. In accordance with HUD regulations the participant and family members must be completely off of all public assistance for a minimum of one year in order to receive their escrow account balance.

Escrow account calculations are based on earned income increases from the effective date of the Contract of Participation. Escrow credit for low, but not very low income, families is based upon 50% of median income limit and result in a higher credit than under the previous guidelines.

*Family Self-Sufficiency Policies are in place in the FSS Action Plan regarding escrow account loans.*

## Chapter 23 PROJECT BASED VOUCHER

### **INTRODUCTION**

This chapter describes the Department of Housing & Urban Development (HUD) regulations and the Housing Authority of the County of Merced (HACM) policies related to the Project Based Voucher (PBV) program in nine parts:

### **General Requirements**

This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

### **PBV Owner Proposals**

This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the HACM will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

### **Dwelling Units**

This part describes requirements related to Housing Quality Standards (HQS), the type and frequency of inspections, and housing accessibility for persons with disabilities.

### **Rehabilitated and Newly Constructed Units**

This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

### **Housing Assistance Payments Contract**

This part discusses Housing Assistance Payment (HAP) Contract requirements and policies including the execution, term, and termination of the HAP Contract. In addition, it describes how the HAP Contract may be amended and identifies provisions that may be added to the HAP Contract at the HACM's discretion.

### **Selection of PBV Program Participants**

This part describes the requirements and policies governing how the HACM and the owner will select a family to receive PBV assistance.

### **Occupancy**

This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to twenty five percent (25%) of the units in any project) are also discussed.

**Determining Rent to Owner**

This part describes how the initial rent to owner is determined, and how rent will be re-determined throughout the life of the HAP Contract. Rent reasonableness requirements are also discussed.

**Payments to Owner**

This part describes the types of payments owners may receive under this program.

**A. GENERAL REQUIREMENTS OVERVIEW [24 CFR 983.5]**

The PBV program allows HACM, which already administers a tenant based voucher program under an Annual Contributions Contract (ACC) with HUD, to operate a PBV program using up to twenty percent (20%) of its voucher program budget authority and attach the funding to specific units rather than using it for tenant based assistance [24 CFR 983.6].

HACM will only operate a PBV program consistent with its Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project based assistance either under an "Agreement to Enter into HAP Contract" (AHAP) or a HAP Contract, the HACM is not required to reduce the number of these units under HAP Contract if the amount of budget authority is subsequently reduced. It is noted that while the number of units does not need to be reduced, HAP Contracts cannot be renewed if more than twenty percent (20%) of the base allocation is utilized for PBV. The HACM, however, is responsible for determining the amount of budget authority that is available for project based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC [24 CFR 983.6].

**TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]**

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, HACM policies for the tenant based voucher program contained in this administrative plan also apply to the PBV program and its participants.

**RELOCATION REQUIREMENTS [24 CFR 983.7]**

Any persons displaced as a result of implementation of the PBV program will be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. HACM will not use voucher program funds to cover relocation costs, except that HACM may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes also will be consistent with other legal and regulatory requirements,

including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR Part 24, subpart B. It is the responsibility of HACM to ensure the owner and any representatives of the owner, such as a property manager, comply with these requirements.

### **EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

The HACM, owners, and property managers must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, HACM will comply with HACM Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

### **B. PBV OWNER PROPOSALS OVERVIEW**

In this document, HACM will;

- Describe the procedures for owner or owner's designee for submission of PBV proposals
- Describe HACM selection of PBV proposals
- Explain how HACM will determine that PBV proposals comply with HUD program regulations and requirements
- Describe how proposals comply with the cap on the number of PBV units per project
- Describe how units meet site selection standards

### **OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51]**

HACM will select PBV proposals in accordance with the selection procedures in this HACM Administrative Plan. HACM will select PBV proposals by either of the following two methods.

- HACM request for PBV Proposals. HACM may solicit proposals by using a Request For Proposals (RFP) to select proposals on a competitive basis in response to HACM request. HACM may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- HACM selection of proposal previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTC's have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date.



**Solicitation and Selection of PBV Proposals [24 CFR 983.51(b) and (c)]**

The HACM procedures for selecting PBV proposals are designed and operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by HACM.

**HACM Request for Proposals for Rehabilitated and Newly Constructed Units**

The HACM will advertise its RFP for rehabilitated and newly constructed housing in one of the following newspapers:

- Merced Sun Star
- Modesto Bee

In addition, HACM will post the RFP and proposal submission and selection procedures on its website (<http://www.merced-pha.com>). HACM will publish its notice at least once in the newspapers and trade journals mentioned above. The notice will specify the number of units HACM estimates that it will be able to assist under the funding HACM is making available. Proposals will be due in HACM office by close of business no less than two weeks from the date of publication. In order for the proposal to be considered, the owner or owner's designee (hereinafter referred to as "owner") must submit the proposal to HACM by the published deadline date and time, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed. HACM will rate and rank proposals for **rehabilitated and newly constructed** housing using the following criteria:

- Owner experience and capability to build or rehabilitate housing as identified in the RFP;
- Extent to which the project furthers HACM goal of deconcentrating poverty and expanding housing and economic opportunities;
- If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

**HACM Requests for Proposals for Existing Housing Units**

HACM will advertise its RFP for existing housing in at least one of the following newspapers:

- Merced Sun Star
- Modesto Bee

In addition, HACM will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site ([www.merced-pha.com](http://www.merced-pha.com)). The notice will specify the number of units HACM estimates that it will be able to assist under the funding HACM is making available.

The proposals will be evaluated using the following criteria:

- Experience as an owner in the tenant based voucher program and owner compliance with the owner's obligations under the tenant based program;
- Extent to which the project furthers HACM goal of de-concentrating poverty and expanding housing and economic opportunities;
- If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- Extent to which units are occupied by families that are eligible to participate in the PBV program.

#### **HACM Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program**

HACM will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low Income Housing Tax Credits (LIHTC) on an ongoing basis.

HACM may periodically advertise that it is accepting proposals, specifying the number of vouchers available for this purpose in one of the following newspapers:

- Merced Sun Star
- Modesto Bee

Proposals will be reviewed on a first come first served basis. HACM will evaluate each proposal on its merits using the following factors:

- Extent to which the project furthers HACM goal of de-concentrating poverty and expanding housing and economic opportunities; and
- Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, Mental Health program, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

#### **HACM-owned Units [24 CFR 983.51(c) and 983.59]**

If HACM submits a proposal for project based housing that is owned or controlled by HACM, the HACM will:

- Use an independent entity which meets HUD approval to perform Housing Quality Standards (HQS) inspections.
- Use an independent entity which meets HUD approval to determine rents and rent reasonableness.
- Obtain HUD approval for the services of these entities prior to selecting the proposal for HACM-owned housing. HACM will only compensate the independent entity, which is responsible for obtaining the services of an appraiser, from HACM ongoing administrative fee income (including amounts credited to the administrative fee reserve). HACM will not use other program receipts to compensate the independent entity and appraiser for their services. HACM, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

#### **HACM Notice of Owner Selection [24 CFR 983.51(d)]**

Within fifteen (15) days of HACM making a selection, HACM will notify the selected owner, in writing, of the owner's selection for the PBV program. HACM will also notify, in writing, all owners that submitted proposals that were not selected and advise such entities of the name of the selected owner.

In addition, HACM will publish its notice for selection of PBV proposals in the same newspapers and trade journals HACM used to solicit the proposals. The announcement will include the name of the owner and address of units selected for the PBV program. HACM will also post the notice of owner selection on its website.

HACM will make available to any interested party its rating and ranking sheets and the documents that identify HACM basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. HACM will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner. HACM will make these documents available for review at HACM during normal business hours. The cost for reproduction of allowable documents will be thirty five (35¢) per page.

#### **HOUSING TYPE [24 CFR 983.52]**

HACM will attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program if, at the time of notice of HACM selection, the units exist and substantially comply with HQS. "Substantially" is defined as any unit that has an accumulation of items that would cost less than \$1,000 and take less than one month's time to comply fully with HQS requirements. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing. HACM choice of housing type will be reflected when it solicits proposals.

#### **Use of PBV in Cooperative Housing and Elevator Projects**

The Housing And Economic Recovery Act of 2008 (HERA) Section 2835(a)(1)(F)8(o)(13)(L) Allows PHAs to enter into PBV HAP contracts with respect to units in cooperative housing and in high rise elevator projects.

#### **PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

##### **Ineligible Housing Types [24 CFR 983.53]**

HACM will not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are

owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes or pads; cooperative housing; and transitional housing. In addition, HACM will not attach or pay PBV assistance for a unit occupied by an owner and HACM will not select or enter into an AHAP or enter into a HAP Contract for a unit occupied by a family ineligible for participation in the PBV program.

#### **Subsidized Housing [24 CFR 983.54]**

HACM will not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Housing Choice Voucher (HCV) assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that HACM could attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy determined by HUD or HACM, in accordance with HUD requirements.

#### **SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55]**

HACM will provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements. The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. HACM will submit the necessary documentation to HUD for a subsidy layering review. HACM will not enter into an AHAP Contract or a HAP Contract until HUD (or an independent entity approved by HUD) has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. Subsidy layering reviews are not required for projects that have undergone a review conducted by the applicable state or local agency for funding on the project. The HAP Contract will contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP Contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

#### **CAP ON NUMBER OF PBV UNITS IN EACH PROJECT**

##### **Twenty-Five Percent (25%) per Project Cap [24 CFR 983.56(a)]**

In general, HACM may not select a proposal to provide PBV assistance for units in a project or

enter into an AHAP or a HAP Contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP Contract, is more than twenty five percent (25%) of the number of dwelling units (assisted or unassisted) in the project. Section 2835(a)(1) of HERA defines a "Project" to mean a single building, multiple contiguous buildings or multiple buildings on contiguous parcels of land.

**Exceptions to Twenty-Five Percent (25%) per Project Cap [24 CFR 983.56(b)]**

Exceptions are allowed and PBV units are not counted against the twenty five percent (25%) per project cap if:

- The units are in a single family project, defined by HUD as any project with one to four units;
- The units are *excepted units* in a multifamily project because they are specifically made available for elderly or disabled families or families receiving supportive services (also known as *qualifying families*).

**Supportive Services**

The types of supportive services offered to families for a project to qualify for the exception are those intended to promote self sufficiency, including:

- Outreach;
- Case management, counseling;
- Health care, psychiatric and mental health care, substance abuse treatment;
- Life skills, parenting skills;
- Child care, transportation, housing search assistance, budgeting;
- Employment assistance, job training/placement;
- Education, vocational opportunities.

Supportive services do not have to be provided at the project site. When supportive services are provided, whether or site or not, the following conditions apply:

The statement of family responsibility in the lease must contain the family's obligation to participate in the designated service program. Failure of the family to comply is good cause to terminate the family from the program.

Participation in medical or disability related services other than drug and alcohol treatment in the case of current abusers is not required as a condition of living in an excepted unit. HACM will ensure that only families receiving supportive services and complying with the service requirements are assisted. To qualify, a family must have at least one member receiving at least one qualifying supportive service. HACM will not require participation in medical or disability related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit, has received, Family Self Sufficiency (FSS) supportive services or any other supportive services as defined above, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. HACM will monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those

families that fail without good cause to complete their supportive services requirement. Monitoring will be accomplished by requiring the owner to provide quarterly reports on the family's participation and confirming this information by interviewing the tenant at the annual re-examination.

HACM will provide PBV assistance for the following types of excepted units—units limited to use by “qualifying families”:

Units in a multifamily project specifically made available for elderly or disabled families; Units for families receiving supportive services.

Elderly, disabled, and families receiving supportive services are all “qualifying families”.

#### **Promoting Partially Assisted Projects [24 CFR 983.56(e)]**

HACM is not setting a cap on the number of PBV units assisted per project beyond the twenty five percent (25%) cap for non-excepted units.

#### **SITE SELECTION STANDARDS**

##### **Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]**

HACM will not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an AHAP Contract or HAP Contract for units on the site, unless HACM has determined that PBV assistance for housing at the selected site is consistent with the goal of de-concentrating poverty, replacement housing and expanding housing and economic opportunities. The standard for de-concentrating poverty and expanding housing and economic opportunities is consistent with the Agency Plan under 24 CFR 903 and this Administrative Plan.

In addition, prior to selecting a proposal, HACM will determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

It is HACM's goal to select sites for PBV housing that provide for de-concentrating poverty, replacement housing and expanding housing and economic opportunities. In complying with this goal HACM may limit approval of sites for PBV housing in census tracts that have family poverty concentrations of twenty percent (20%) or less.

HACM will grant exceptions to the twenty percent (20%) standard where HACM determines that the PBV assistance will complement other local redevelopment activities designed to de-concentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than twenty percent (20%), such as sites census tracts where:

The proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

The concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

The proposed PBV development will be located in an area undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;

New market rate units are being developed where such market rate units will positively impact the poverty rate in the area;

There has been an overall decline in the poverty rate within the past five years; or

There are meaningful opportunities for educational and economic advancement.

#### **Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]**

HACM will not enter into an AHAP for units that will be rehabilitated, nor execute a HAP Contract for existing units until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site; Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

#### **New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless HACM determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and

- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

### **ENVIRONMENTAL REVIEW [24 CFR 983.58]**

HACM's activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* (i.e., County of Merced) is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). HACM will not enter into an AHAP Contract nor enter into a HAP Contract until it has complied with the environmental review requirements.

In the case of existing housing, the County of Merced, responsible for the environmental review under 24 CFR part 58, must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5. HACM will not enter into an agreement to enter into a HAP Contract or a HAP contract with an owner, and HACM, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed. HACM will supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. HACM requires the owner to carry out mitigating measures required by the County of Merced (or HUD, if applicable) as a result of the environmental review.

### **C. DWELLING UNITS OVERVIEW**

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

### **HOUSING QUALITY STANDARDS [24 CFR 983.101]**

The HQS for the tenant based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, cooperative housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program. The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

### **Lead-based Paint [24 CFR 983.101(c)]**

The lead based paint requirements for the tenant based voucher program do not apply to the PBV program. Instead, the Lead based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.



## **HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

The HACM will comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. HACM will ensure that the percentage of accessible dwelling units complies with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C. Housing first occupied after March 13, 1991, will comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

## **INSPECTING UNITS**

### **Pre-selection Inspection [24 CFR 983.103(a)]**

The HACM will examine the proposed site before the proposal selection date. If the units to be assisted already exist, HACM will inspect all the units before the proposal selection date, and will determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. HACM, however, will not execute the HAP Contract until the units fully comply with HQS.

### **Pre-HAP Contract Inspections [24 CFR 983.103(b)]**

The HACM will inspect each contract unit before execution of the HAP Contract. The HACM will not enter into a HAP Contract covering a unit until the unit fully complies with HQS.

### **Turnover Inspections [24 CFR 983.103(c)]**

Before providing assistance to a new family in a contract unit, the HACM will inspect the unit. The HACM will not provide assistance on behalf of the family until the unit fully complies with HQS.

### **Annual Inspections [24 CFR 983.103(d)]**

At least annually during the term of the HAP Contract, the HACM will inspect a random sample, consisting of at least twenty percent (20%) of the contract units in each project to determine if the contract units and the premises are maintained in accordance with HQS. The sample will be selected at random. A database of the units will be maintained which can be exported to Excel. This software program has a Random Number Generation Tool that will allow twenty percent (20%) of the total units to be selected at random. Turnover inspections are not counted toward meeting this annual inspection requirement.

If more than twenty percent (20%) of the annual sample of inspected contract units in a project fails the initial inspection, HACM will re-inspect one hundred percent (100%) of the contract units in the project.

### **Other Inspections [24 CFR 983.103(e)]**

The HACM will inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP Contract. The HACM will take into account complaints and any other information coming to its attention in scheduling inspections.

The HACM will conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and will conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violations of HQS.

In conducting the HACM supervisory quality control HQS inspections, the HACM will include a representative sample of both tenant based and project based units.

#### **Inspecting HACM-owned Units [24 CFR 983.103(f)]**

In the case of HACM owned units, the inspections will be performed by an independent agency designated by the HACM and approved by HUD. The independent entity will furnish a copy of each inspection report to the HACM and to the HUD San Francisco field office. The HACM will take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP Contract by HACM owner.

#### **D. REHABILITATED AND NEWLY CONSTRUCTED UNITS OVERVIEW [24 CFR 983.151]**

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance. Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

#### **AGREEMENT TO ENTER INTO HAP CONTRACT**

In order to offer PBV assistance in rehabilitated or newly constructed units, HACM will enter into an agreement to enter into an AHAP Contract with the owner of the property. The Agreement will be in the form required by HUD [24 CFR 983.152(a)].

In the AHAP, the owner agrees to develop the PBV contract units to comply with HQS, and HACM agrees that, upon timely completion of such development in accordance with the terms of the Agreement, HACM will enter into a HAP Contract with the owner for the contract units [24 CFR 983.152(b)].

#### **Content of the Agreement [24 CFR 983.152(e)]**

At a minimum, the HACM will describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements will be included in the description of work to be performed under the Agreement;

- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description will include the rehabilitation work, write up and, where determined necessary by HACM, specifications and plans. For new construction units, the description will include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

### **Execution of the AHAP [24 CFR 983.153]**

The AHAP will be executed “promptly” after HACM notice of proposal selection to the selected owner. HACM, however, will not enter into the AHAP with the owner until the subsidy layering review is completed. Likewise, the HACM will not enter into the AHAP until the environmental review is completed and the HACM has received environmental approval. Promptly, in this case, requires the selected owner to have completed the necessary reviews for the project and be ready to enter into an AHAP within one year from the date of notification that the project is awarded PBV assistance.

The HACM has the option to grant up to two six month extensions to this one year limit provided the owner can demonstrate that progress is being made and that the project will go to AHAP within the extended time frame.

### **CONDUCT OF DEVELOPMENT WORK**

#### **Labor Standards [24 CFR 983.154(b)]**

If an AHAP covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner’s contractors and subcontractors must pay Davis Bacon wages to laborers and mechanics employed in the development of housing. The HUD prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. HACM will monitor compliance with labor standards.

#### **Equal Opportunity [24 CFR 983.154(e)]**

The owner must comply with Section 3 of the HUD Act of 1968 and the implementing regulations at 24 CFR Part 135. The owner must also comply with federal equal employment opportunity requirements.

#### **Owner Disclosure [24 CFR 983.154(d) and (e)]**

The AHAP and HAP Contracts must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs. The owner must also disclose any possible conflict of interest that would be a violation of the AHAP and HAP Contracts or HUD regulations.

### **COMPLETION OF HOUSING**

The AHAP will specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The AHAP will also specify the deadline for submission by the owner of the required evidence of completion.

#### **Evidence of Completion [24 CFR 983.155(b)]**

At a minimum, the owner must submit the following evidence of completion to the HACM in the form and manner required by the HACM:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the AHAP;
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing; and
- Certificate of Occupancy (for new construction) or Final Building Permit cards (for rehabilitation projects) from the County of Merced.

#### **HACM Acceptance of Completed Units [24 CFR 983.156]**

Upon notice from the owner that the housing is completed, the HACM will inspect the housing to determine if has been completed in accordance with the AHAP, including compliance with HQS and any additional requirements imposed under the AHAP. The HACM also will determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the AHAP, the HACM will not enter into the HAP Contract.

If the HACM determines the work has been completed in accordance with the AHAP and that the owner has submitted all required evidence of completion, HACM will submit the HAP Contract for execution by the owner and must then execute the HAP Contract.

#### **E. HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP) OVERVIEW**

The HACM will enter into a HAP Contract with an owner for units that are receiving PBV assistance. The purpose of the HAP Contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP Contract term. The HAP Contract will be in the form required by HUD [24 CFR 983.202].

#### **HAP CONTRACT REQUIREMENTS**

##### **Contract Information [24 CFR 983.203]**

The HAP Contract will must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the project;
- The number of contract units in each project, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;

- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP Contract term;
- The number of units in any project that will exceed the twenty five percent (25%) per project cap, which will be set aside for occupancy by qualifying families; and The initial rent to owner for the first twelve (12) months of the HAP Contract term.

**Execution of the HAP Contract [24 CFR 983.204]**

The HACM will not enter into a HAP Contract until each contract unit has been inspected and HACM has determined that the unit complies with HQS.

For existing housing, the HAP Contract will be executed “promptly” after the HACM selects the owner proposal and inspects the housing units. “Promptly”, in this case, means that the owner must be ready and willing to sign the HAP Contract within two (2) months from the date HACM has completed HQS inspections, found the units in compliance, and has notified the owner of its selection decision.

For newly constructed or rehabilitated housing, the HAP Contract will be executed after HACM has inspected the completed units, determined that the units have been completed in accordance with the AHAP, and the owner furnishes all required evidence of completion. Also, for rehabilitated or newly constructed housing, the HAP Contract will be executed within two months of HACM determining that the units have been completed in accordance with the AHAP, all units meet HQS, and the owner has submitted all required evidence of completion.

**Term of HAP Contract [24 CFR 983.205]**

The HACM will enter into a HAP Contract with an owner for an initial term of no less than one year and no more than fifteen (15) years.

The term of all PBV HAP Contracts will be negotiated with the owner on a case by case basis within HUD parameters.

At the time of the initial HAP contract or any time before expiration of the HAP Contract, the HACM may extend the term of the contract for an additional term of up to fifteen (15) years if HACM determines an extension is appropriate to continue providing affordable housing for low-income families. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

Contracts or contract extensions may not exceed fifteen years cumulatively. A PHA must determine that the extension of the contract is appropriate to achieve long term affordability of the housing or to expand housing opportunities.

When determining whether or not to extend an expiring PBV contract, HACM will consider several factors including, but not limited to:

- The cost of extending the contract and the amount of available budget authority;
- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP Contract and lease(s);
- Whether the location of the units continues to support the goals of de-concentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

#### **Termination by HACM [24 CFR 983.205(e)]**

The HAP contract will provide that the term of HACM's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by HACM in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP Contract. If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP Contract, the HACM may terminate the HAP Contract by notice to the owner. The termination will be implemented in accordance with HUD instructions.

#### **Termination by Owner [24 CFR 983.205(d)]**

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP Contract term, the owner may terminate the HAP Contract by giving notice to the HACM. In this case, families living in the contract units must be offered tenant-based assistance.

#### **Remedies for HQS Violations [24 CFR 983.207(b)]**

HACM will not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS.

If HACM determines that a contract does not comply with HQS, HACM will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Chapter 10.

### **AMENDMENTS TO THE HAP CONTRACT**

#### **Substitution of Contract Units [24 CFR 983.206(a)]**

HACM will amend the HAP Contract to substitute a different unit, if the unit has the same number of bedrooms in the same project, is HQS compliant, and meets all PBV requirements for a previously covered contract unit. Before any such substitution can take place, HACM will inspect the proposed unit and determine the reasonable rent for the unit.

**Addition of Contract Units [24 CFR 983.206(b)]**

At HACM's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per project and on the overall size of HACM's PBV program, a HAP Contract may be amended during the three year period following the execution date of the HAP Contract to add additional PBV units in the same project. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

HACM will consider adding contract units to the HAP Contract when HACM determines that additional housing is needed to serve eligible low income families.

Circumstances may include, but are not limited to:

- The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and
- Voucher holders are having difficulty finding units that meet program requirements.

**HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.206(c) and 983.302(e)]**

The HAP Contract year is the period of twelve (12) calendar months preceding each annual anniversary of the HAP Contract during the HAP Contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP Contract term. The annual anniversary of the HAP Contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP Contract, even in cases where contract units are placed under the HAP Contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

**OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.209]**

When the owner executes the HAP Contract, the owner certifies that at such execution and at all times during the term of the HAP Contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP Contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by HACM, and the lease is in accordance with the HAP Contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP Contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;

- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and;
- The family does not own or have any interest in the contract unit.

#### ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(a)]

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP Contract with HACM and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the project as established by the owner. HACM may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the RFP, AHAP Contract and the HAP Contract. These requirements must be in addition to, not in place of, compliance with HQS.

HACM will identify the need for any special features on a case by case basis depending on the intended occupancy of the PBV project. HACM will specify any special design standards or additional requirements in the invitation for PBV proposals, the AHAP Contract, and the HAP Contract.

#### **Vacancy Payments [24 CFR 983.352(b)]**

Vacancy Payments will be paid to the owner in accordance with the terms of the HAP Contract.

#### **F. SELECTION OF PBV PROGRAM PARTICIPANTS OVERVIEW**

Many of the provisions of the tenant based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

#### **ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]**

HACM will select families for the PBV program from those who have applied for admission to the voucher program. A separate PBV Waiting List will be maintained. Eligibility for admission will be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant based voucher program. Applicants must qualify as a family as defined by HUD and HACM, have income at or below HUD specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide Social Security information for family members [24 CFR 5.216 and 5.218] and consent to HACM's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. An applicant family also must meet HUD requirements related to current or past criminal activity. In addition families who will reside in "Excepted" units must meet the appropriate criteria as a "qualified" family.



HACM will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 2.

**In-Place Families [24 CFR 983.251(b)]**

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by HACM is considered an "in place family". These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in place family will be placed on HACM's waiting list. Once the family's continued eligibility is determined (HACM may deny assistance to an in place family for the grounds specified in 24 CFR 982.552 and 982.553), the family will be given an absolute selection preference and HACM must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

**ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]**

HACM will use separate waiting lists for the tenant based HCV Program and the PBV Program.

**SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

Applicants who will occupy units with PBV assistance will be selected from HACM's waiting list. The HACM will place families referred by the PBV owner on its PBV waiting list when the waiting list is open.

**Income Targeting [24 CFR 983.251(c)(6)]**

At least seventy five percent (75%) of the families admitted to the HACM's tenant based and project based voucher programs during HACM fiscal year from the waiting list will be extremely low income families. The income targeting requirement applies to the total of admissions to both programs.

**Units with Accessibility Features [24 CFR 983.251(c)(7)]**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the HACM must first refer families who require such features to the owner.

**Preferences [24 CFR 983.251(d)]**

HACM will use the same selection preferences that are used for the tenant based voucher program. HACM provides an absolute selection preference for eligible in place families as described in

~~Section 23 VI.B. All preferences that apply to the HCV Program also apply to the PBV program or for particular PBV projects or units. When vacancies in PBV units of a specific size (i.e., number of bedrooms) or excepted units, HACM will select only qualified families of the correct and family composition size according to HACM's subsidy standards for those units in the correct order from the waiting list. If HACM has projects with more than twenty five percent (25%) of the units receiving project based assistance because those projects include "excepted units" (units specifically made available for elderly or disabled families, or families receiving supportive services), the HACM will give preference to such families when referring families to these units [24 CFR 983.261(b)].~~

### ~~**OFFER OF PBV ASSISTANCE**~~

#### ~~**Refusal of Offer [24 CFR 983.251(e)(3)]**~~

~~HACM is prohibited from taking, and will not take, any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:~~

- ~~• Refuse to list the applicant on the waiting list for tenant based voucher assistance;~~
- ~~• Deny any admission preference for which the applicant qualifies;~~
- ~~• Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under HACM's selection policy;~~
- ~~• Remove the applicant from the tenant based voucher waiting list.~~

#### ~~**Disapproval by Landlord [24 CFR 983.251(e)(2)]**~~

~~If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant based voucher waiting list.~~

#### ~~**Acceptance of Offer [24 CFR 983.252]**~~

##### ~~***Family Briefing***~~

~~When a family accepts an offer for PBV assistance, HACM will give the family an oral briefing. The briefing will include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, HACM will provide a briefing packet that explains how HACM determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.~~

##### ~~***Persons with Disabilities***~~

~~If an applicant family's head or spouse is disabled, HACM will assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 8). In addition, HACM will have a mechanism for referring a family that includes a member with mobility impairment to an appropriate accessible PBV unit.~~

##### ~~***Persons with Limited English Proficiency***~~

HACM will take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 1).

#### ***Violence Against Women Act (VAWA)***

No applicant for the PBV program who has been a victim of domestic violence, dating violence, or stalking shall be denied admission into the program if they are otherwise qualified.

An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence, and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.

HACM may terminate the assistance to remove a lawful occupant or tenant who engages in criminal acts or threatened acts of violence or stalking to family members or others without terminating the assistance or evicting victimized lawful occupants.

There is no limitation on the ability of HACM to terminate assistance for other good cause unrelated to the incident or incidents of domestic violence, dating violence or stalking, other than the victim may not be subject to a “more demanding standard” than non victims. There is no prohibition on HACM terminating assistance if it “can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant’s (victim’s) assistance is not terminated.”

Any protections provided by law which give greater protection to the victim are not superseded by these provisions.

#### **Definitions**

The same definitions of “domestic violence,” “dating violence,” and “stalking,” and of “immediate family member” are provided in Sections 606 and 607. While definitions of domestic and dating violence refer to standard definitions in the VAWA, the definition of stalking provided in Title VI is specific to the housing provisions.

These are:

- *Domestic Violence* [As defined in Section 40002 of VAWA 1994] which states as follows: SEC 40002(a)(6) — “DOMESTIC VIOLENCE” — 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 cohabiting with or has cohabited 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.

- *Dating Violence* — [As defined in Section 40002 of VAWA 1994] which states as follows: SEC 40002(a)(8) — “**DATING VIOLENCE**” — The term “dating violence” means violence committed by a person — (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - i. — The length of the relationship.
  - ii. — The type of relationship.
  - iii. — The frequency of interaction between the persons involved in the relationship.
- *Stalking* — means — (A) (i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; and (ii) to place under surveillance with the intent to kill, injure, harass or intimidate another person; and (B) in the course of, or as a result of, such following, pursuit, surveillance or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to —
  - i. — that person;
  - ii. — a member of the immediate family of that person; or
  - iii. — the spouse or intimate partner of that person
- *Immediate Family Member* — means, with respect to a person — (A) a spouse, parent, brother, sister, or child of that person, or an individual to whom that person stands in loco parentis; or (B) any other person living in the household of that person and related to that person by blood or marriage.

#### **OWNER SELECTION OF TENANTS**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(b)].

#### **Leasing [24 CFR 983.253(a)]**

During the term of the HAP Contract, the owner must lease contract units to eligible families that are selected and referred by HACM from HACM's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on HACM's subsidy standards.

#### **Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify HACM of any vacancy or expected vacancy in a contract unit. After receiving such notice, HACM will make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies.

The HACM and the owner will make reasonable efforts to minimize the likelihood and length of any vacancy.

The owner must notify HACM in writing (mail, fax, or e-mail) within seven (7) calendar days of learning about any vacancy or expected vacancy.

HACM will make every reasonable effort to refer families to the owner within fifteen (15) days of receiving such notice from the owner.

#### **Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]**

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, HACM will give notice to the owner amending the HAP Contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

HACM will provide the notice to the owner within fifteen (15) days of the 120th day of the vacancy. Unless the owner can give adequate reason for HACM not to reduce the number of contract units within fifteen (15) days of the date of HACM's notice, the amendment to the HAP Contract will be effective the 1st day of the month following the date of HACM's notice.

#### **TENANT SCREENING [24 CFR 983.255]**

##### **HACM Responsibility**

HACM is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy.

HACM will not conduct screening to determine a PBV applicant family's suitability for tenancy unless the applicant is to move into a HACM-owned or managed unit. HACM may deny applicants based on such screening. HACM will provide the owner with an applicant family's current and prior address (as shown in HACM records) and the name and address (if known by HACM) of the family's current landlord and any prior landlords.

HACM will inform owners of their responsibility to screen prospective tenants. Upon request, owners may request and HACM will provide specific information about the family being considered for tenancy. HACM will provide the following information:

- The family's current address as provided by the Applicant; and
- The name and address, if known, of the owner/landlord of the family's current and prior places of residence. HACM will respond only to specific questions asked by owners and only when HACM has documentation to confirm the accuracy of the information being provided. HACM will provide applicant families a description of its policy on providing information to owners and give the same types of information to all owners.

##### **Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families, the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy. The owner must notify HACM in writing within fifteen (15) days when rejecting an applicant and give the grounds for such rejection

## **G. OCCUPANCY OVERVIEW**

After an applicant has been selected from the waiting list, determined eligible by the HACM, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit may begin.

### **LEASE [24 CFR 983.256]**

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

### **Form of Lease [24 CFR 983.256(b)]**

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD required tenancy addendum. The tenancy addendum must include, word for word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease.

HACM may review the owner's lease for compliance with state or local law.

### **Lease Requirements [24 CFR 983.256(c)]**

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

### **Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by HACM (the names of family members and any HACM-approved live-in aide);
- All provisions in the HUD required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

#### **Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]**

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for “good cause”, or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, HACM will provide the family with a tenant-based voucher and remove the unit from the PBV HAP Contract.

#### **Changes in the Lease [24 CFR 983.256(c)]**

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give HACM a copy of all changes.

The owner must notify HACM in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by HACM and in accordance with the terms of the lease relating to its amendment. HACM will re-determine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The re-determined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

#### **Owner Termination of Tenancy [24 CFR 983.257]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Chapter 14 and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

#### **Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c)]**

If a family is living in a project based unit that is excepted from the twenty five percent (25%) per project cap on project basing because of participation in a supportive services program (e.g., FSS), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

#### **Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]**

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by HACM policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than one hundred eighty (180) consecutive days.

**Security Deposits [24 CFR 983.258]**

The owner may collect a security deposit from the tenant. The security deposit must not exceed the following:

- Unfurnished Unit: Two months contract rent (this includes any amount labeled as last month's rent)
- Furnished Unit: Three months contract rent (this includes any amount labeled as last month's rent)

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. HACM has no liability or responsibility for payment of any amount owed by the family to the owner.

**MOVES****Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]**

If HACM determines that a family is occupying a unit that is too small or too big, based on HACM's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, HACM will notify the family and the owner within fifteen (15) days of HACM's determination of the family's need to move. HACM will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same project;
- PBV assistance in another project; and
- Tenant based voucher assistance.

If HACM offers the family a tenant based voucher, HACM will terminate the housing assistance payments for a wrong sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by HACM).

When HACM offers a family another form of assistance that is not a tenant based voucher, the family will be given thirty (30) calendar days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this thirty day time frame, HACM will terminate the housing assistance payments at the expiration of this thirty day period.



HACM may make exceptions to this thirty day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

**Family Right to Move [24 CFR 983.260]**

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to HACM. If the family wishes to move with continued tenant based assistance, the family must contact HACM to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, HACM will offer the family the opportunity for continued tenant based assistance, in the form of a Housing Choice Voucher. If a voucher is not immediately available upon termination of the family's lease in the PBV unit, HACM will give the family priority to receive the next available voucher.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the Housing Choice Voucher assistance.

**EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.261]**

HACM will not pay housing assistance under a PBV HAP Contract for more than twenty five percent (25%) of the number of dwelling units in a project unless the units are [24 CFR 983.56]:

- In a single family project;
- Specifically made available for elderly or disabled families; or
- Specifically made available for families receiving supportive services as defined by HACM. At least one member must be receiving at least one qualifying supportive service.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self Sufficiency (FSS) supportive services or any other service as defined as defined by HACM and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the twenty five percent (25%) per project cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or disabled), must vacate the unit, and HACM will cease paying housing assistance payments on behalf of the non-qualifying family.

If the family is moving to a non-excepted PBV unit, the family will have sixty (60) days in which to complete the move. If the family will move with a Housing Choice Voucher, as is likely to be the case with a non-elderly or non-disabled surviving spouse, then the term of the voucher will apply. HACM may grant extensions if the family can demonstrate good cause as outlined in Chapter 8, of this Administrative Plan.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP Contract. It is possible for the HAP Contract to be amended to substitute a different unit in the project in accordance with program requirements; or the owner terminates the lease and evicts the

family. HACM will terminate housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements.

#### **H. DETERMINING RENT TO OWNER OVERVIEW**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP Contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP Contract term. During the term of the HAP Contract, the rent to owner is re-determined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

#### **RENT LIMITS [24 CFR 983.301]**

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by HACM, not to exceed 110 percent of the applicable fair market rent (or any HUD approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

#### **Certain Tax Credit Units [24 CFR 983.301(e)]**

For certain tax credit units, the rent limits are determined differently than for other PBV units. In general, the rent to owner must not exceed the lowest of the tax credit rent minus any utility allowance; the reasonable rent; or the rent requested by the owner. Under provisions of the Housing and Economic Recovery Act of 2008, PHA's are permitted to use the higher section 8 rent for a tax credit unit if the LIHTC rent is less than the amount that would be permitted under Section 8. HACM will follow the rules and regulations promulgated by HUD and in effect at the time the HAP Contract is executed.

#### **Definitions**

**A qualified census tract** is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least fifty percent (50%) of households have an income of less than sixty percent (60%) of Area Median Gross Income (AMGI), or where the poverty rate is at least twenty-five percent (25%) and where the census tract is designated as a qualified census tract by HUD.

**Tax credit rent** is the rent charged for comparable units of the same unit size (i.e., number of bedrooms) in the project that also receive the low income housing tax credit but do not have any additional rental assistance (e.g., tenant based voucher assistance).

#### **Use of Fair Market Rents (FMR), Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]**

When determining the initial rent to owner, HACM will use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When re-determining the rent to owner, HACM will use the most recently published FMR and the utility allowance schedule in effect at the time of re-determination. HACM will not use an earlier FMR for initial rent determination or for re-determinations. Any HUD approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

#### **Redetermination of Rent [24 CFR 983.302]**

HACM will re-determine the rent to owner upon the owner's request or when there is a five percent (5%) or greater decrease in the published FMR.

#### **Rent Increase**

If an owner wishes to request an increase in the rent to owner from HACM, it must be requested sixty (60) days prior to the annual anniversary of the HAP Contract and include the requested amount of rent being proposed. HACM will only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

HACM will not approve any increase of rent to owner until and unless the owner has complied with requirements of the HAP Contract, including compliance with HQS. The owner will not receive any retroactive increase of rent for any period of noncompliance.

#### **Rent Decrease**

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner will be decreased regardless of whether the owner requested a rent adjustment.

#### **Notice of Rent Change**

The rent to owner is re-determined by written notice by HACM to the owner specifying the amount of the re-determined rent. HACM notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP Contract. The adjusted amount of rent to owner applies for the period of twelve (12) calendar months from the annual anniversary of the HAP Contract.

HACM will provide the owner with at least thirty (30) days written notice of any change in the amount of rent to owner.

#### **HACM-owned Units [24 CFR 983.301(g)]**

For HACM-owned PBV units, the initial rent to owner and the annual re-determination of rent at the anniversary of the HAP Contract are determined by the independent entity approved by HUD. HACM will use the rent to owner established by the independent entity.

**REASONABLE RENT [24 CFR 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit will not exceed the reasonable rent for the unit as determined by HACM.

**When Rent Reasonable Determinations are Required**

HACM will re-determine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a five percent (5%) or greater decrease in the published FMR in effect sixty (60) days before the contract anniversary (for the unit sizes specified in the HAP Contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- HACM approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP Contract is amended to add or substitute a different contract unit in the same project; or
- There is any other change that may substantially affect the reasonable rent.

**How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance will be determined by comparison to rent for other comparable unassisted units. When making this determination, HACM will consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services, maintenance, and utilities to be provided by the owner.

**Comparability Analysis**

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that are receiving project based assistance. The analysis will show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and will be retained by HACM. The comparability analysis may be performed by HACM staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses will not have any direct or indirect interest in the property.

**HACM-owned Units**

For HACM owned units, the amount of the reasonable rent will be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity will provide a copy of the determination of reasonable rent for HACM owned units to HACM and to the HUD field office where the project is located.

**Owner Certification of Reasonable Rent**

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is

not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, HACM may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

#### **EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

In addition to the rent limits discussed in Section 23 VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 23 II.D).

#### **Other Subsidy [24 CFR 983.304]**

At its discretion, HACM may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants, or other subsidized financing.

For units receiving assistance under the HOME program, rents will not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner will not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- A project receiving low income housing tax credits;
- Any other type of federally subsidized project specified by HUD.

#### **Combining Subsidy**

Rent to owner will not exceed any limitation required to comply with HUD subsidy layering requirements.

#### **Rent Control [24 CFR 983.305]**

In addition to the rent limits set by PBV program regulations, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

### **I. PAYMENTS TO OWNER**

#### **HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]**

During the term of the HAP Contract, HACM will make housing assistance payments to the owner in accordance with the terms of the HAP Contract. During the term of the HAP Contract, payments will be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment will be paid to the owner on or about the first day of the month for which payment is due, unless the owner and HACM agree on a later date.

HACM will not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit). The amount of the housing assistance payment by HACM is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP Contract. Unless the owner complies with all provisions of the HAP Contract, the owner does not have a right to receive housing assistance payments.

#### **VACANCY PAYMENTS [24 CFR 983.352]**

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out; extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

#### **TENANT RENT TO OWNER [24 CFR 983.353]**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by HACM in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in HACM notice to the family and owner. The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by HACM is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by HACM. The owner must immediately return any excess payment to the tenant.

#### **Tenant and HACM Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by HACM. Likewise, HACM is responsible only for making the housing assistance payment to the owner in accordance with the HAP Contract. HACM is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. HACM will not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

#### **Utility Reimbursements**

If the amount of the utility allowance exceeds the total tenant payment, HACM will pay the amount of such excess to the tenant as a reimbursement for tenant paid utilities, and the tenant rent to the owner must be zero.

#### **OTHER FEES AND CHARGES [24 CFR 983.354]**

#### **Meals and Supportive Services**

With the exception of PBV assistance in assisted living developments, the owner may not require

~~the tenant to pay charges for meals or supportive services. Non payment of such charges is not grounds for termination of tenancy. In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges will not be included in the rent to owner, nor will the value of meals and supportive services be included in the calculation of the reasonable rent. Non payment of such charges, however, is grounds for termination of the lease by the owner in an assisted living development.~~

#### **Other Charges by Owner**

~~The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.~~

### **Chapter 23**

#### **PROJECT-BASED VOUCHER PROGRAM FINAL RULE [24 CFR Part 983]**

##### **INTRODUCTION**

This chapter describes the Project-Based Voucher Program Final Rule. Only projects with a letter of commitment/selection on or after November 14, 2005 are covered by the “Project-Based Voucher Program: Final Rule” (also known as the “new” rule which was effective November 14, 2005).

Any project with a commitment/selection letter and an Agreement to enter into a Housing Assistance Payment (AHAP) contract that was executed on or after January 16, 2001, but before November 14, 2005, are covered by the “Revisions to the HACM Project-Based Assistance Program: Initial Guidance” (also known as the “old” rule).

HUD’s Project-Based Voucher (PBV) program allows the HACM (HA) to project base up to twenty percent (20%) of its Housing Choice Voucher (HCV) tenant-based funding. At least eighty percent (80%) of the HACM’s HCV funding must remain tenant-based.

Subsequent reductions in budget authority do not require any reduction in the number of PBV units under the AHAP or Housing Assistance Payment (HAP) contract. HUD does not provide additional housing assistance payments or administrative fees for the PBV program.

Units may be selected in a new construction project, a rehabilitation project, and/or an existing project. The number of units that can be selected is generally limited to twenty five percent (25%) of the units in a building. Exceptions to the twenty five percent (25%) general rule are available for units in single family homes (defined as four (4) units or less), and units in a multi-family building that are available for qualifying families. Qualifying families are elderly and/or disabled families and families receiving supportive services.

The HACM can execute an initial HAP contract for up to fifteen (15) years, with the option to renew the HAP contract in fifteen (15) year increments if the HACM determines an extension is appropriate. Rents under the PBV program are generally limited to the Fair Market Rent (FMR) or other HUD approved exception rents.

Like tenant-based rents, PBV rents must also be rent reasonable. HUD has promulgated special

exceptions for projects that receive other forms of subsidy or tax credits.

After twelve (12) months, families have the option to move from PBV assisted housing to tenant-based housing if funding is available. A separate transfer list has been established to facilitate a fair and equitable method of allocating available tenant-based vouchers to eligible project-based residents.

**A. Owner Proposal Selection Procedures**

**Request for Proposal (RFP).** An advertisement announcing an RFP will be published in the following newspapers, *The Merced Sun Star*, *The Manteca Bulletin*, *The Tracy Press*, and *The Lodi Sentinel*. The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered for the project-based program, the submission deadline, and will note how to obtain the full RFP that contains comprehensive information on the application and selection process. Any advertisement for the PBV will contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements. The due date for the submission of the RFP will be determined in accordance with the HACM's Procurement Policy.

**Other Competitive Proposals.** Selection of a proposal that was previously selected within the last three (3) years pursuant to another program's competitive process (i.e. tax credits, etc.) and in which the possible receipt of PBV assistance was not a consideration. Such proposals will be evaluated in accordance with criteria established in the HACM's Annual Plan and/or the Consolidated Plan for the jurisdiction in which the project is to be located.

**B. Criteria for PBV Award**

**Deconcentrate Poverty.** The site and/or location are consistent with the goal of deconcentrating poverty, expanding housing and economic opportunities, and facilitating compliance with Fair Housing laws. Generally, this standard is met as long as no more than twenty percent (20%) of the households in the census tract in which the project is located are at or below the established poverty level for the county.

**Housing Quality Standards (HQS) Site and Neighborhood Inspection** The site must meet HQS site standards (see Chapter 10, Housing Quality Standards and Inspections). The site and neighborhood must be reasonably free from disturbing noises, reverberations, and other dangers to the health, safety and general welfare of the occupants. Other dangers shall include scientifically verified unacceptable levels of contamination of air or water. It shall be presumed if the project is surrounded by other occupied homes and/or ongoing businesses that said dangers do not exceed the threshold to pass HQS site standards, unless information is received to the contrary. The HACM is responsible for inspecting the proposed project's site and neighborhood to determine consistency with the HQS site standards.

**Promote the HACM Goals.** Projects must contribute to meeting the goals outlined in the HACM's Annual Plan and/or the Consolidated Plan for the jurisdiction in which the project to be assisted is located. These goals will be clearly identified in the RFP and will also be applied to "Other Competitive Proposals".

**Units Eligible for PBV Award.** Multi-family rental housing units are generally eligible for PBV's. Duplex units and larger may be awarded PBV's so long as their use does not fall under the categories listed below under "Condition's that Prohibit PBV Award". Rental units located in a project that is being developed with Hope VI funds (awarded in fiscal year 2001 or later) or HUD



Capital funds which are themselves not public housing units, may receive PBV assistance so long as the ratio of non-Hope VI or Capital funds and other public housing funds used in the development (i.e. a thirty (30) unit project may have twenty (20) PBV units and ten (10) public housing units so long as the amount of public housing funds, including Hope VI and Capital funds, is less than 33.33% of the total amount of funds used in the development of the thirty (30) rental units). PBV assistance in Hope VI/Mixed Finance transactions that are “mixed-income” developments (i.e. that do not consist solely of all public housing units) is permitted subject to certain restrictions. In addition, PBV assistance is permitted for a unit that has been subsidized with HUD Section 236 interest reduction payments.

**Conditions that Prohibit PBV Award.** PBV assistance may not be provided to nursing homes, transitional housing, cooperative housing, student housing, owner-occupied housing, a high-rise elevator project that may be occupied by families with children, or for any unit currently existing that has a family who is not eligible for assistance under the PBV. In addition, the HACM may not pay PBV assistance to any unit that is a public housing unit, a unit that is subsidized with another form of Housing Choice Voucher (HCV) assistance such as HUD’s tenant-based voucher assistance, a unit subsidized with another government rental subsidy, such as HUD’s Section 236 rental assistance payments or rental assistance under the Federal HOME Investment Partnerships Program, or units subsidized by HUD under its Section 202 (housing for seniors) or Housing Choice Voucher 11 (housing for persons with disabilities) programs.

**Projects Owned by the HACM.** Selection of PBV units that are owned by the HACM, or in which the HACM has an identity of interest, must be approved by HUD using criteria that mirror those in the applicable or most recent RFP, Annual Plan and/or Consolidated Plan of the jurisdiction in which the proposed project is to be located.

### C. **Project Selection and Requirements**

**Notice Procedures.** A notice of owner selection must be in writing and can only be made after the items above have been determined. The Public Notice of the project selected for PBV assistance must be made within fourteen (14) calendar days. The Public Notice shall consist of a single notice in the local newspaper of general circulation under Legal Notices and on the official HACM website. Selection of a HACM owned project can be made only after HUD determines that the selection was made in conformance of the procedures specified in this Administrative Plan. The HACM will make available for public review all documentation used in making the selection of proposals.

**Requirements for a PBV Assisted Construction Project.** Construction projects include new construction (projects that do not exist on the date of project selection) and rehabilitation (existing projects that do not substantially meet HQS on the date of selection). New construction and rehabilitation projects must have an Agreement to enter a Housing Assistance Payment (AHAP) contract before construction starts on the project.

**Pre-AHAP Requirements.** Before the HACM can execute an AHAP contract for a new construction or rehabilitation project, the following requirements must be met:

- Environmental review must be completed
- Request for Release of Funds must have been granted
- Determination of proposed rents and utility allowances has been made
- Subsidy layering review completed

AHAP Requirements are as follows:

- Construction cannot commence prior to the execution of an AHAP (in a form required by HUD Headquarters)
- The AHAP must contain description of the project, including identification of the site, location of contract units and the following:
  - Number and size of units (square feet, bedrooms and baths)
  - Services, maintenance or equipment supplied by owner
  - Utilities provided by owner
  - Indication of whether requirements of the Fair Housing Act and 504 (access for disabled) will apply to contract units
- Estimated initial rent to owner
- Description of work to be performed under the AHAP including additional Housing Authority quality and design requirements that exceed the HQS requirements
- Labor standard requirements apply to the development of nine (9) or more contract units.
- Note that other funding in the project may trigger a more restrictive threshold for the project.
- Section 3, employment of low-income persons on or associated with the project and other Equal Opportunity requirements
- Debarred project principles cannot be awarded participation in the PBV program or other federal programs and activities
- The owner must disclose any possible conflict of interest
- The project must be completed within specified deadlines contained in the AHAP

**Pre-Housing Assistance Payment (HAP) Contract Requirements.** Prior to execution of the HAP, the HACM must determine that the owner has submitted all required evidence of completion and assure that the work has been completed in accordance with the AHAP including:

- Certification by the owner that the project has been completed in accordance with HQS and all other requirements in the AHAP
- An owner certification that the labor standard requirements and the equal opportunity requirements have been complied with
- Any additional documentation that may be required by the HACM

**D. Requirements to Execute a HAP Contract for Existing Projects**

Assure that the Environmental Review has been done and a Request for Release of Funds has been granted as well as the following:

- The determination of rents and the utility allowance has been made
- A subsidy layering review has been completed
- Assure that the project actually meets the HQS requirements

**E. HAP Requirements for all Construction and Existing Projects**

Must be in a form required by HUD Headquarters and it must contain description of the housing including:

- Identification of the site
- Location of contract units
- Number and size of units (square feet, bedrooms and baths)
- Services, maintenance, or equipment supplied by owner
- Utilities provided by owner

- Indication of whether requirements of the Fair Housing Act and 504 will apply to contract units

It must include the initial rent to owner and contract term. The term of the contract is subject to availability of sufficient appropriated funding as determined by HUD or the HACM.

#### **F. HAP Contract Amendments**

##### **Limited unit substitutions allowed**

A unit meeting the PBV requirements, including meeting HQS, can substitute a different unit of the same bedroom size in the same building by amendment. The reasonable rent for the substitute unit must be determined prior to the effective date of substitution.

##### **Limited additional units allowed**

Within three (3) years of HAP contract execution, units may be added to the HAP contract by amendment provided that:

- The twenty five (25%) unit limitation in a building is not exceeded.
- The addition of units will not exceed the authorized budget authority for PBV assistance of five percent (5%).
- The units must meet PBV requirements.

##### **HAP Anniversary Date**

For units added by amendment to the HAP contract or staged completion of a project, the anniversary date for the HAP contract is the date the contract was initially executed. The expiration date of the HAP contract is based on the date that the HAP contract was initially executed.

##### **Staged Units**

The difference between units added by amendment to the HAP contract and a staged HAP contract is that the units in a staged HAP contract were identified in the HAP contract while those added by amendment were not.

#### **G. Rent Determinations and Changes**

The amount of the initial rent that the owner may collect from its tenants is established at the beginning of the HAP contract term. During the term of the HAP contract, the rent to the owner is redetermined at:

- The owner's request for a rent increase
- Any time there is a five percent (5%) or greater decrease in the published HUD Fair Market Rent (FMR) for the area in which the project-based unit is located. Under the final PBV regulations, the general rule is that the rent an owner may charge for a unit receiving PBV assistance shall not exceed the lower of (1) the applicable FMR for the unit, based on the bedroom size, (2) the reasonable rent as determined by the HACM, or (3) the rent requested by the owner.

If the unit receiving PBV assistance is also a Low Income Housing Tax Credit (LIHTC) unit, the project is not located in a qualified Census Tract, the unit is located in a building that has LIHTC units of the same bedroom size as the PBV units but those comparable LIHTC units do not have any form of rental assistance other than tax credits, and if the tax credit rent exceeds the applicable

HUD Fair Market Rent, then the rent to owner is not to exceed the lower of (1) the tax credit rent minus any utility allowance as established under the rules of the LIHTC, (2) the reasonable rent as determined by the HACM, or (3) the rent requested by the owner.

The owner of such a LIHTC unit would be limited to receiving:

- Rent from the tenant
- PBV assistance for that unit up to only the maximum tax credit rent

This will also apply to existing HAP contracts at the time of any adjustment in the rents that may be charged under those PBV/LIHTC HAP contracts.

Finally, rent for PBV assisted units may not exceed any other rent limitations that may be imposed (for example under the LIHTC program for tax credit units or units that were constructed using funds from the Federal HOME Investment Partnerships Program).

#### **H. PBV Rents Based on Fair Market Rents**

In determining rents, the HACM will use the most recently published HUD Fair Market Rents (FMR) in effect and the utility allowance schedule in effect as to the execution of the HAP contract for the HACM's geographical area, or the amounts for each in effect at any time during the thirty (30) day period immediately prior to the beginning date of the HAP contract. The HACM must use the same applicable utility allowance schedule for both its tenant-based and project-based voucher programs.

#### **I. Owner Rent Increase Requests**

If the owner desires to increase the rents charged to the PBV assisted units, the request for an increase in the rents must be made by the owner in writing to the HACM at least sixty (60) days, but no more than ninety (90) days prior to the annual anniversary of the HAP contract. The HACM will then determine if the owner is entitled to a rent increase by recomputing the maximum rent that could be charged by an owner under the tests described above.

The HACM may determine on its own that there should be a rent decrease if there has been a decrease of five percent (5%) or greater in the HUD Fair Market Rent for the project area. Such a rent decrease will apply even if the owner did not request the rent determination (or in fact asked for a rent increase). The new adjusted rent that may be charged by the owner applies for the period of twelve (12) calendar months from the annual anniversary of the HAP contract.

In addition to redeterminations based on changes in HUD's Fair Market Rents or requests by the owner, the HACM is required to redetermine the reasonable rent that may be charged by the project owner whenever the HAP contract is amended to substitute different contract units in the same building which is permitted at any time during the term of the HAP contract, as would be the case when the owner decides to allow the PBV units in that building to "float" and therefore, not designate specific rental units as the PBV units. The option to "float" units is the owner's to declare at initial occupancy. Once selected, the choice is irrevocable. Later exceptions may be granted in extreme circumstances and at the sole discretion of the HACM.

In determining the reasonable rent, the HACM must conduct a comparability analysis (either by its own staff or by another qualified person or entity) and consider at least three (3) comparable units in the private, unassisted market; however, those unassisted units may be units in the same project as the PBV assisted units.

The monthly HAP by the HACM to the owner for a PBV contract unit that is leased to a qualifying

tenant is the rent that the owner is permitted to charge, minus the rent that the tenant is required to pay to the owner under HUD regulations (which is the tenant rent minus the utility allowance). Under Section 8 (o)(3) of the United States Housing Act of 1937, the tenant's rent contribution is generally limited to forty percent (40%) of the tenant's annual income. If the amount of the utility allowance exceeds the Total Tenant Payment (TTP), the HACM shall pay the amount of such excess utility allowance to the tenant as a reimbursement for tenant paid utilities and the tenant rent to the owner shall then be zero (\$0).

**J. Vacancy Loss Provisions and Contract Amendment**

If an assisted family moves out of the unit, the owner may keep the HAP payment for three calendar months when the family moves out : extending from the beginning of the first calendar month after the move out month for a period not exceeding two full months following the move out month.

In addition, the HACM may, but is not required to amend the HAP contract to reduce the number of PBV contract units for those PBV units that have been vacant for a period of 120 days or more since the owner provided the HACM a notice of vacancy for such unit(s). Consideration will be taken into account whether to reduce the number of contract units or not include market conditions, demonstrated efforts to re-rent the unit to qualified applicants, the amount of additional time that may be needed to lease the unit, and any other criteria that would impact the likelihood of being able to rent the unit within another thirty (30) days. However, if the unit remains vacant for 120 days, cancellation of the contract for that unit shall be mandatory.

**K. Lease Expiration**

Upon the expiration of the lease for a PBV assisted unit, which must be for a minimum initial term of one year (and must also contain a HUD required tenancy addendum), the owner may renew the lease, refuse to renew the lease for good cause (as defined under 24 CFR Part 982.310) or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, the HACM is obligated to provide the family with tenant-based voucher assistance, and that the PBV unit will be removed from the HAP contract.

**L. Termination of HAP Contract**

An owner is allowed to terminate the HAP contract if the amount of rent to the owner for any PBV contract unit, as adjusted under the project-based voucher rules described above (which are set forth at 24 CFR Parts 983.301, 983.302 and 983.303) is reduced below the amount of the initial rent to the owner established by the HAP contract. In such a case, the families that had received the benefit of the project-based voucher assistance will be entitled to tenant-based voucher assistance.

Once a family has moved into an apartment that receives the benefit of PBV assistance under a HAP contract, the family, if it moves out voluntarily from that project-based assisted unit after at least one year of residing there, the family is eligible for assistance under the HACM's tenant-based voucher program or another comparable program for rental assistance provided by the HACM. However, families that leave the PBV assisted unit before having resided there one year or are evicted at any time for cause are not automatically entitled to assistance under the HACM's tenant-based voucher program.

Upon funding availability and at the HACM's discretion, families residing in project-based units who need to move in the first year because of an increase in family size or because they reside in a special needs unit but no special needs exist, may be offered a tenant-based voucher if comparable project-based housing is not available within sixty (60) days.

**M. Organization and Characteristics of the Wait List for Project-Based Vouchers**

**Status Changes Independently.** The project-based voucher wait list may be opened and closed separately from its community-wide tenant-based wait list. The same public opening and closing procedures shall be used for both lists (see Chapter 4, Establishing Preferences and Maintaining the Waiting List).

**Special Needs Units and Housing Types.** Sufficient information shall be gathered from each family to determine their eligibility for special needs units, i.e. disability (sensory, wheelchair, senior unit, etc.), and special codes developed to allow efficient sorting and identification of such families when special needs units are available.

**Effect of Housing Refusal.** Families refusing an offer of housing shall not have their name removed from the wait list. This does not affect their standing for other areas for which they have applied or on the community-wide tenant-based wait list. Once housed in PBV housing, the applicant's name is removed from the PBV wait list. There is no effect on the community-wide tenant-based wait list.

**Purging the PBV Wait List.** The project-based wait list will be purged as needed. Failure to respond to a purge letter is cause for removal of their listing from the project-based wait list (see Chapter 4, Establishing Preferences and Maintaining the Waiting List)

**Consistency with Tenant-based List.** All other mechanics of wait list management will be consistent with the tenant-based wait list (see Chapter 4, Establishing Preferences and Maintaining the Waiting List)

**N. Project-Based Voucher (PBV) Program Limit Old Rule**

The PBV Program will not exceed five percent (5%) of the total number of budgeted units under the HACM's Housing Choice Voucher Program (HCVP). Funding designated specifically for HUD Veterans Affairs Supportive Housing (VASH) project based units is not included in the five percent (5%) cap.

The HACM shall not deny any family or individual the equal opportunity to apply for or receive assistance under the HCVP on the basis of race, color, sex, religion, creed, national or ethnic origin, age, familial status, handicap or disability or sexual orientation.

To further its commitment to fully comply with applicable Civil Rights laws, the HACM will provide Federal, State and local information to voucher holders regarding unlawful discrimination and any recourse available to families who believe they are victims of a discriminatory act. Such information will be made available during the family's briefing session, and all applicable Fair Housing and Equal Opportunity (FHEO) information and discrimination complaint forms will be made a part of the voucher holder's briefing packet and available upon request at the front desk in the HACM offices.

All HACM staff will be required to attend fair housing training and be informed of the importance of affirmatively furthering fair housing and providing equal opportunity to all families, including providing reasonable accommodations to persons with disabilities, as a part of the overall commitment to providing quality customer service. Fair Housing posters are posted throughout the HACM offices, including in the lobby and interview rooms and the equal opportunity logo will be used on all outreach materials. Staff will attend local fair housing update training sponsored by HUD and other local organizations to keep current with new developments.

Except as otherwise provided in 24 CFR 8.21(c)(1), 8.24(a), 8.25, and 8.31, no individual with disabilities shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination because the HACM's facilities are inaccessible to or unusable by persons with disabilities. Posters and housing information are displayed in locations throughout the HACM's office in such a manner as to be easily readable from a wheelchair.

The HACM's offices are accessible to persons with disabilities. Accessibility for the hearing impaired is provided by California Relay Service or by utilizing the Telecommunications Device for the Deaf (TDD) TeleTYpe (TTY) at 711 or 1-800-855-7100.

### **Definitions**

**Existing Housing.** For purposes of the PBV Program, an existing unit is a unit which, at the time of written notice of selection of the project for PBV assistance, requires less than \$1,000 in rehabilitation including its prorated share of work to be done to common areas and systems to meet Housing Quality Standards (HQS).

**Twenty-Five (25%) Percent Maximum.** No more than twenty-five percent (25%) of the units in any PBV project may receive assistance except as noted below:

- Single family dwellings (four or fewer units)
- Dwellings specifically designated for elderly
- Dwellings specifically designated for disabled families as defined by HUD in 24 CFR(b).
- Families receiving supportive services as defined by HUD

### **Funding Objectives and Requirements**

The goals of the policy and project based program's focus will be on accomplishing the following objectives for households at or below thirty percent (30%) of the Area Median Income (AMI):

- Increase the number of affordable housing opportunities
- Increase the affordability of existing affordable housing opportunities

Units to be selected for project based funding subsidies will have to meet the following criteria:

- a) Serve households at or below thirty percent (30%) of the AMI at time of admission to the project.
- b) Serve special needs populations. Special needs populations include any population that shares a need or set of needs that represents a barrier to success in the Housing Choice Voucher Program. However, an owner cannot discriminate on the basis of a specific disability.
- c) Meet the HUD's Housing Quality Standards.

d) Be available for occupancy when application for subsidy is made.

All housing providers applying to participate in this program must be eligible to participate in HUD programs.

### **New Construction Requirements**

The owner must submit an architect's certification that the working drawings, specifications and proposed construction comply with HUD's minimum property standards, local codes and ordinances, and zoning requirements.

The site must not be located in an area of minority concentration, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area, unless the project is necessary to meet overriding housing needs that cannot be met in that housing market area. All new construction projects must meet HUD's Field Office site and neighborhood review requirements.

### **Family Outreach**

The HACM will publicize and disseminate information to make known the availability of housing assistance and related services for very low-income families. When the waiting list is open, the HACM will publicize the availability and nature of housing assistance for very low-income families in a newspaper of general circulation.

The HACM will communicate the status of housing availability to other service providers in the community, and advise them of housing eligibility factors and guidelines in order that they can make proper referrals for housing assistance.

### **Advertisement Policy for Soliciting Owners**

An advertisement will be placed in *The Merced Sun Star*, the HACM web site and any other local community newspapers/advertisement. . The advertisement will run once a week for a period of three (3) consecutive weeks and indicate the number of vouchers to be project-based and the type of units that will be considered for project-basing. Interested owners will have at least thirty (30) days from the date of the last publication to apply.

An advertisement for existing building units that will be held to the twenty five percent (25%) limitation will be placed separately from those for new construction, rehabilitation and existing units that will exceed the twenty five percent (25%) unit limitation.

All advertisements to project-based vouchers will contain a statement requiring all respondents that participation requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements. New construction and rehabilitation projects will also be subject to the Federal labor standard provisions.

Only applications received in response to a HACM approved RFP will be considered for project basing. If the RFP solicits applications for new or rehabilitation construction only, applications for existing units will not be accepted or vice versa.



A pre-approved advertising and competitive bidding process approved by HUD will be used to solicit project-based vouchers.

**Minimum Information to be submitted with all Proposals**

All formal proposals should be limited to a total of ten (10) pages. The HACM reserves the right to request additional information, if necessary to complete the selection process. Proposals may combine requests for vouchers for multiple sites/developments under one application or may submit different sites/developments. All sites/developments included in an application will be evaluated as a separate project.

All proposals must provide the following information for each site/development that will be used to determine the amount of rental assistance for the site/development and to evaluate the proposal:

1. Project location (including street address or addresses) and ownership.
2. Building(s) description(s) and number of housing units requiring project-based assistance, including square footage, bedroom count and bathroom count.
3. Estimated date of availability of units.
4. List of area amenities and services, including playgrounds, public schools, public transportation and access to grocery stores.
5. Operating pro-forma statement and current year operating budget including estimated subsidy.
6. Proposed rent per unit, including indication of which utilities, services and equipment are included in the rent and which ones are excluded.
7. Description of experience in managing and operating similar housing developments.
8. Indicate any recent audit findings regarding the management of similar properties.
9. List all projects the organization currently manages that have project-based assistance or some other income restricted units.
10. Description of the population that will be served with respect to household composition and special needs. Indicate the percentage of units that will serve households with children (or households requiring two or more bedrooms) and the number of bedrooms per housing unit.
11. Indicate the percentage of units that will serve households with special needs and explain why this special needs population represents a barrier to success. Special needs population includes any population that shares a need or a set of needs that represents a barrier to success in the HCVP.
12. Description of the support services to be provided to the special needs population that will be served and how these services will be funded currently and into the foreseeable future. Describe how this project would serve this population if funding for services is reduced or withdrawn.

13. A signed certification of the owner's intention to comply with Title VI of the Civil Rights Act of 1966, Title VIII of the Civil Rights Act of 1968, E.O. 11063, E.O. 11246, Section 3 of the Housing and Urban Development Act of 1968 and all applicable Federal requirements listed in 24 CFR 983.11. This includes, but is not limited to, the payment of not less than the prevailing wages in the locality pursuant to the Davis-Bacon Act to all laborers and mechanics employed in the construction or rehabilitation of the project. Existing housing projects are not subject to this provision.
14. The identity of the owner, developer, builder, architect, management agent (and other participants), the names of officers and principal members, shareholders, investors and other parties having a substantial interest; the previous participation of each in HUD Programs on the prescribed HUD Form No. 2530 and a disclosure of any possible conflict of interest by any of these parties that would be a violation of the Agreement or the Contract; and information on the qualifications and experience of the principle participants.

The following information will be requested for applications that are conditionally approved:

- Evidence of site control, and for new construction, identification and description of the proposed site, site plan, and the neighborhood.
- Evidence of compliance with local permits and zoning requirements.
- Documentation that the rents being proposed are reasonable and are comparable to rents being charged for similar housing, with similar amenities in the same area as the proposed project.

#### **Vacancy Payments**

If an assisted family moves out of the unit, the owner may keep the HAP payment for three calendar month when the family moves out : extending from the beginning of the first calendar month after the move out month for a period not exceeding two full following the move the move out month.

The HACM reserves the right to adjust the number of units or terminate the project- based contract, if the units are not fully utilized by an eligible family within 120 days of the vacancy, commencing on the first day of the month when the vacancy occurs.

#### **Termination of the HAP Contract**

The HACM may set the initial term of the HAP contract for a maximum five (5) year period and may extend it for subsequent periods ranging from one (1) year to five (5) years as considered appropriate by the Authority to achieve long-term affordability or for the expansion of housing opportunities.

The HACM will stipulate the term of the initial HAP contracts or renewals. All contracts, extensions and renewals are contingent on the future availability of appropriations and availability of funding under the HACM's Annual Contributions Contract (ACC) with HUD.

## **Housing Choice Voucher Project Based Program Guidelines**

### **Inclusionary Clause**

Notwithstanding the contents of this PBV Program Plan, for all areas not specifically addressed by this plan, the HACM's Administrative Plan shall govern as a supplement to Part 983 of 24 CFR.

### **Consistency with the HACM Plan**

The PBV Program shall be consistent with the goals and objectives of the HACM's Annual (Agency) Plan. Each plan shall have a statement of the number of PBV units, general locations, and how project-based units will be consistent with the Agency Plan.

### **Privacy Rights**

Applicants and participants, including all adults in the household, are required to sign the HUD Form 9886, Authorization for Release of Information. This document incorporates the Federal Privacy Act Statement and describes the conditions under which HUD and the HACM will obtain family information.

The HACM's policy regarding the 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 or his or her designee.

The HACM'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. 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.

### **Reasonable Accommodations Policy**

It is the policy of the HACM to be service directed in the administration of the housing programs, and to exercise and demonstrate a high level of professionalism while providing housing services to families.

A participant with a disability must first ask for a specific change to a policy or practice as an accommodation of their disability before the HACM will treat a person differently than anyone else. All policies and practices will be designed to provide assurances that persons with disabilities will be given reasonable accommodations, upon request, so that they may fully access and utilize the PBV Program and related services. The availability of requesting an accommodation will be made known by including notices on HACM forms and letters. This policy is intended to afford persons with disabilities an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as those who do not have disabilities and is applicable to all situations including when a family initiates contact with the HACM, when the HACM initiates contact with a family including

when a family applies, and when the HACM schedules or reschedules appointments of any kind.

To be eligible to request a reasonable accommodation, the requester must first certify (if apparent) or verify (if not apparent) that they are a person with a disability under the following Americans with Disabilities Act (ADA) definition:

- A physical or mental impairment that substantially limits one or more of the major life activities of an individual;
- A record of such impairment; or
- Being regarded as having such an impairment

Rehabilitated former drug users and alcoholics are covered under the ADA. However, a current drug user is not covered. In accordance with 5.403, individuals are not considered disabled for eligibility purposes solely on the basis of any drug or alcohol dependence. Individuals whose drug or alcohol addiction is a material factor to their disability are excluded from the definition. Individuals are considered disabled if disabling mental and physical limitations would persist if drug or alcohol abuse discontinued.

Once the person's status as a qualified person with a disability is confirmed, the HACM will require that a professional third party competent to make the assessment provide written verification that the person needs the specific accommodation due to their disability and the change is required for them to have equal access to the housing program.

If the HACM finds that the requested accommodation creates an undue administrative or financial burden, the HACM will deny the request and/or present an alternate accommodation that will still meet the need of the person.

An undue administrative burden is one that requires a fundamental alteration of the essential functions of the HACM (i.e., waiving a family obligation).

An undue financial burden is one that when considering the available resources of the agency as a whole, the requested accommodation would pose a severe financial hardship on the HACM.

The HACM will provide a written decision to the person requesting the accommodation within fourteen (14) calendar days. If a person is denied the accommodation or feels that the alternative suggestions are inadequate, they may request an informal hearing to review the HACM's decision.

A reasonable accommodation will be made for persons with a disability that requires an advocate or accessible offices. A designee will be allowed to provide some information, but only with the permission of the person with the disability.

The HACM 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 HACM will deny admission to those applicant households with individuals who are, at the time

of consideration for admission, using medical marijuana. This is in accordance with the Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. 13661).

All HACM mailings will be made available in an accessible format upon request, as a reasonable accommodation.

### **Verification of Disability**

The HACM will verify disabilities under definitions in the Fair Housing Amendments Act of 1988, Section 504 of the 1973 Rehabilitation Act, and Americans with Disabilities Act.

### **Outreach**

Outreach efforts will include notification of the HACM's 504 Advisory Board as well as all other media and agencies listed in the Administrative Plan regarding public notices (see section on opening and closing the waiting list in Chapter 3, Applying for Admission.)

### **Applying for Admission**

All persons who wish to apply for the PBV program must submit a pre-application either on-line or in a written format, as indicated in the HACM's public notice. Applications will be made available in an accessible format upon request from a person with a disability.

Applicants must meet the criteria for the PBV wait list. The HACM must accept pre- applications from applicants for whom the wait list is open. For PBV senior/elderly housing, the applicant must meet the age requirement.

To provide specific accommodation to persons with disabilities, upon request, the information may be mailed to the applicant and if requested, it will be mailed in an accessible format.

The full application is completed at the eligibility appointment in the applicant's own handwriting, unless assistance is needed, or a request for a reasonable accommodation is requested by a person with a disability. Applicants will then be interviewed by the HACM staff to review the information on the full application form. Verification of disability as it relates to 504, Fair Housing, or ADA reasonable accommodation will be requested at this time.

The full application will also include questions asking all applicants whether reasonable accommodations are necessary.

### **The Eligibility Process**

The eligibility criteria for families under the PBV Program are identical to those used in the HCVP. The units which are occupied by ineligible tenants cannot be placed under a HAP Contract. The HACM will inspect each unit proposed for the PBV Program and identify any tenants that reside in said units.

A variety of problems may be encountered in determining family eligibility, including families who are not income eligible and otherwise eligible families whose units are too large or too small for their family composition. Mitigation to these situations will be subject to the PBV Final Rule Guidance.

For the purposes of determining eligibility for the PBV Program, (f this Administrative Plan) shall apply.

### **Preferences**

The HACM uses the same preferences for the PBV Program as for the HCV program. These preferences are included in Chapter 4, Establishing Preferences and Maintaining the Waiting List of this Administrative Plan.

### **Removal from Waiting List and Purging**

For the purposes of removing and/or purging applicants from the PBV waiting list, the policies established in Chapter 4, Establishing Preferences and Maintaining the Waiting List of this Administrative Plan will apply.

### **Informal Review**

The informal review process as described in Chapter 19, “Complaints and Appeals” of this Administrative Plan will apply to the PBV Program.

### **Tenant Selection**

Income targeting requires that no less than seventy five percent (75%) of the families admitted annually must have incomes that are less than thirty percent (30%) of the area median for the overall voucher program including the PBV Program. All new admissions to the program will be selected from the waiting list.

The HACM will establish a PBV waiting list. All families on the regular waiting list can be placed on this list at their request when it is open. All applicants for tenant-based assistance can be placed on this list without penalty to any other application for assistance they may have been pending.

The HACM may place applicants referred by owners onto

An applicant cannot be removed from the waiting list because the owner does not select them or because the family does not accept the unit; they maintain their position on the waiting list as though no offer was made.

The PBV waiting list when it is open. The preferences for admission to the PBV are similar to those used for the tenant- based HCVP.

### **Units Designated for Elderly or Disabled Families**

Developments specifically designed for elderly or disabled families may enter into contract under the PBV Program. An elderly family is defined as a family whose head, spouse, co-head, or sole member is a person who is 62 years of age or older. A disabled family is a family whose head, spouse, co-head, or sole member is a person with a disability [24 CFR 5.403].

Preference will be given in tenant selection for units in the project-based development designated for senior or disabled families. In selecting elderly or disabled families to fill these units, the HACM must also apply any preferences established in this Administrative Plan. The

HACM may not discriminate against elderly or disabled families that include children (Fair Housing Amendments Act of 1988).

If there are not enough elderly families to occupy the units in a designated senior Project Based Voucher development, the HACM may allow near-elderly families to occupy the units. A near-elderly family is a family whose head, spouse, or co-head is at least 50 years of age but is less than 62 years of age. When there are insufficient elderly families on the waiting list who wish to reside in a PBV Program development designated as a senior complex, near-elderly families will be selected.

### **HACM/ Owner Responsibility/ Obligation of the Family**

This section outlines the responsibilities and obligations of the HACM, the owners/landlords, and the participating families.

#### **HACM Responsibilities**

1. The HACM will comply with the consolidated ACC, HUD regulations and other requirements, and this Administrative Plan.
2. In administering the program, the HACM must:
3. Publish and disseminate information about the availability and nature of housing assistance under the program
4. Explain the program to owners and families
5. Encourage owners to make units available for leasing in the program, including owners of suitable units located outside areas of poverty or racial concentration
6. Affirmatively further fair housing goals and comply with equal opportunity requirements
7. Make efforts to help disabled persons secure satisfactory housing
8. Receive applications from families, determine eligibility, maintain the waiting list, select applicants, certify each selected family, and provide housing information to families selected
9. Determine who can live in the assisted unit at admission and during the family's participation in the program
10. Obtain and verify evidence of citizenship and eligible immigration status in accordance with 24 CFR part 5
11. Inspect the unit before the assisted occupancy begins and annually inspect at least twenty five percent (25%) of the project-based units or as deemed appropriate by
12. 24 CFR Part 983
13. Determine the amount of the housing assistance payment for a family
14. Determine the maximum rent to the owner and whether the rent is reasonable
15. Make timely housing assistance payments to an owner in accordance with the HAP contract
16. Examine family income, size, composition at admission, and annually during the family's participation in the program. The examination includes verification of income, assets, allowable deductions and other family information
17. Establish and adjust the utility allowance schedule
18. Administer and enforce the HAP contract with an owner, including taking appropriate action if the owner defaults (i.e., HQS violation)
19. Determine whether to terminate assistance to a participant family for violation of family obligations
20. Conduct informal reviews of certain decisions concerning applicants for participation in the program
21. Conduct informal hearings on certain decisions concerning participant families
22. Provide sound financial management of the program

#### **Owner Responsibilities**

1. The owner is responsible for performing all of the owner's obligations under the
2. Agreement (new construction and rehabilitation only), HAP contract and the lease.
3. The owner is responsible for:
  - a. Performing all management and rental functions for the assisted unit, including determining suitability and selecting a tenant from the Housing Choice Voucher PBV waiting list to
  - b. lease the unit.
4. Renting eligible units solely to eligible PBV families.
5. Maintaining the unit in accordance with HQS, including performance of ordinary and extraordinary maintenance.
6. Complying with equal opportunity requirements.
7. Preparing and furnishing information required under the HAP contract.
8. Enforcing tenant obligations under the lease.
9. Paying for utilities and services (unless paid by the family under the lease).
10. For provisions on modifications to a dwelling unit occupied or to be occupied by a person with disabilities see 24 CFR 100.203.
11. Collecting from the family:
  - a. Any security deposit required under the lease;
  - b. The tenant contribution (the part of rent to owner not covered by the housing assistance payment); and
  - c. Any charges for unit damage caused by the family.

Obligations of the Family

This section states the obligations of a participant family under the program.

A. Supplying required information:

- The family must supply any information that the HACM or HUD determines is necessary in the administration of the 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 HACM or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.
- The family must disclose and verify Social Security Numbers and must sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.

B. HQS breach caused by the family: The family is responsible for any HQS breach caused by the family or its guests.

C. Allowing the HACM to inspect the unit: The family must allow the Housing Authority to inspect the unit at reasonable times and after at least a 24 hour notice.

D. Violation of lease: The family may not commit any serious or repeated violation of the lease.

E. Family Notice of Move or Lease Termination: The family must provide the owner at least a 30 day notice in writing, with a copy to the HACM before the family moves out.



F. Owner Eviction Notice: The family must promptly give the HACM a copy of any owner eviction notice it receives.

G. Use and Occupancy of the Unit:

- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- Prior to approval of the composition of the assisted family residing in the unit, the owner must first authorize the addition of any household member. The HACM will send the owner the appropriate form for the owner to sign. The HACM must approve the composition of the assisted family residing in the unit. The family must promptly inform the HACM of the birth, adoption or court-awarded custody of a child. The family must request approval from the HACM to add any other family member as an occupant of the unit. No other person may reside in the unit (except for a foster child/foster adult or live-in aide). If the HACM has given approval, a foster child/foster adult or a live-in aide may reside in the unit.
- The family must promptly notify the HACM if any family member no longer resides in the unit.
- Members of the household may engage in legal profit making activities in the unit, but only if such activities are incidental to primary use of the unit for residence by members of the family. Any business use of the unit must comply with zoning requirements and the affected household member must obtain all appropriate licenses.
- The family must not sublease the unit.
- The family must not assign the lease or transfer the unit.

H. Absence from the Unit: The family must supply any information or certification requested by the HACM to verify that the family is living in the unit, or relating to family absence from the unit, including any requested information or certification on the purposes of family absences. The family must cooperate with the HACM for this purpose. The family must promptly notify the HACM of its absence from the unit.

Absence means that no member of the family is residing in the unit. The family may be absent from the unit for up to thirty (30) days. The family must request permission from the HACM for absences exceeding thirty (30) days. The HACM will make a determination within five (5) business days of the request. An authorized absence may not exceed 180 days. Any family absent for more than thirty (30) days without authorization will be terminated from the PBV Program.

Authorized absences may include, but are not limited to:

- Prolonged hospitalization
- Absences beyond the control of the family (i.e., death in the family, other family member illness)
- Other absences that are deemed necessary by the HACM

I. Interest in the Unit: The family may not own or have any interest in the unit.

J. Fraud and Other Program Violations: The members of the family must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program.

- K. Crime by Family Members: The members of the family may not engage in drug-related criminal activity or other violent criminal activity.
- L. Other Housing Assistance: An assisted family or members of the family, may not receive Housing Choice Voucher PBV assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) Federal, State or local housing assistance program.

### **Briefing Types and Required Attendance**

A full HUD required briefing will be conducted for applicant families who are determined to be eligible for assistance. The briefings will be conducted. Families who attend a briefing and still have the need for individual assistance will be referred to their Eligibility Specialist.

The purpose of the briefing is to explain to families how the program works and the documents in the voucher holder's packet so that they are fully informed about the program. This will enable them to utilize the program to their advantage.

### **Determining Family Unit (Voucher) Size**

The HACM does not determine who shares a bedroom/sleeping room, but there must be at least one person per bedroom on the voucher. The HACM's subsidy standards for determining voucher size shall be applied in a manner consistent with Fair Housing guidelines. For subsidy standards, an adult is a person 18 years old or older.

All standards in this section relate to the number of bedrooms on the voucher, not the family's actual living arrangements.

One bedroom will generally be assigned for each two family members. The HACM will consider factors such as family characteristics including sex, age, or relationship. Consideration will also be given for medical reasons and the presence of a live-in aide.

The HACM may approve an additional bedroom for medical equipment if the need is documented by a health care provider in accordance with PIH Notice 2919-51. The actual equipment in the extra bedroom will be verified by the HACM during the annual inspection of the unit. If the extra bedroom is not being used for the intended purpose, the HACM must reduce the subsidy standard and corresponding payment standard at the family's next annual recertification.

Generally, the HACM assigns one bedroom to two people within the following guidelines:

- Foster children will be included in determining unit size only if they will be in the unit for more than 12 months.
- Live-in attendants will generally be provided a separate bedroom. No additional bedrooms are provided for the attendant's family.
- Space may be provided for a child who is away at school but who lives with the family during school recesses.
- Space will not be provided for a family member, other than a spouse, who will be absent most of the time, such as a member who is away in the

- military.
- Adults of different generations may have separate bedrooms.
- Single person families shall be allocated a zero or a one bedroom voucher.

### **Guidelines for Determining Bedroom Size**

#### GUIDELINES FOR DETERMINING VOUCHER SIZE

Voucher Size	Persons in Household	
	Minimum Number	Maximum Number
0 Bedroom	1	1
1 Bedroom	1	2
2 Bedrooms	3	4
3 Bedrooms	5	6
4 Bedrooms	7	8
5 Bedrooms	9	10
6 Bedrooms	11	12

### **Overcrowded, Under-Occupied and Accessible Units (PIH 2011-54)**

The HACM subsidy standards determine the appropriate size unit for the family size and composition. If the HACM determines that a family is occupying a:

- Wrong-size unit; or
- Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the HACM must promptly notify the family and the owner of this determination and of the HACM's offer of continued assistance in another unit pursuant to the following:
  - PBV assistance in an appropriate size unit (in the same building or in another building);
  - Other project based housing assistance (i.e. by occupancy of a public housing unit); or
  - Tenant based rental assistance under the voucher program.

### **Rent**

The HACM contract with the owner sets the rent amount for each unit with project-based assistance. The amount of the rent may not exceed the lower of the applicable maximum level, as explained below, or the reasonable rent in the light of the rents charged for comparable unassisted units in the area.

To allow an owner to charge more than the payment standard because the rent is reasonable would result in limiting the families whom would be eligible to live in the unit. Conceivably, a family interested in the unit would be ineligible if the family's portion of the rent exceeded forty percent 40%. The idea of project basing units is to assure affordable housing for families and allowing the owner to have rents higher than the payment standard defeats the assurance of affordable housing.

If the unit under consideration is financed with Low Income Housing Tax Credits (LIHTC), the rents will be subject to a special exception. If an LIHTC development is

located outside a qualified census tract, the rent may be as high as the rent charged for comparable units in the development with tax credit subsidies but without additional rental assistance. That is, if the rent for an LIHTC project is higher than the maximum voucher payment standard, the rent allowed for project basing the units may be above the payment standard and up to the amount charged in the other LIHTC financed units.

A rent increase during the term of the contract has to be approved by the HACM. The family share of the rent for the project-based vouchers remains at thirty percent (30%) of the adjusted income for rent (subject to the same exceptions in the tenant-based voucher program).

### **Annual Recertification/Reexamination**

Families are required to be recertified at least annually. Income limits are not used as a test for continued eligibility at recertification.

#### **Reexamination Notice to the Family**

The HACM will maintain a reexamination tracking system and the household will be notified by mail of the date and time for their interview. If requested as a reasonable accommodation by a person with a disability, the HACM will provide the notice in an accessible format. The HACM will also mail the notice to a third party, if requested as a reasonable accommodation for a person with disabilities. These accommodations will be granted upon verification that they meet the need presented by the disability.

The HACM's procedure for conducting annual re-certifications will be:

- An eligibility package will be mailed to the resident at least sixty (60) days prior to the recertification month. This package will include all required eligibility forms for the family to review, sign and return within a specific time frame. In addition, the package will provide a list of necessary third party verification(s) needed for continued assistance. If the package is not returned, is incomplete, or the family requests assistance, a follow-up letter, a telephone interview or an office interview will be scheduled.

#### **Completion of Annual Recertification**

The HACM will have all recertifications for families completed before the anniversary date. This includes notifying the family of any changes in rent at least thirty (30) days before the scheduled date of the change in family rent.

#### **Persons with Disabilities**

Persons with disabilities who are unable to come to the office will be granted an accommodation by conducting the interview at the person's home, upon verification that the accommodation requested meets the need presented by the disability.

#### **Collection of Information**

The HACM has established appropriate recertification procedures necessary to ensure that the income data provided by families is complete and accurate.

The family will be responsible to complete the recertification packet.

The Eligibility Specialist will review the returned eligibility package provided by the family and enter the information into the database from the recertification package. In

addition, all third party verifications will be reviewed and verified. The family is required to complete and sign a Personal Declaration Form.

#### Requirements

All adult household members will be required to complete and sign the recertification package.

#### Failure to Respond to Notification to Recertify

If the family fails to return the recertification package or fails to provide required information, a follow-up letter or a documented telephone call will be conducted.

After two attempts in contacting the family and all efforts have been exhausted, the Eligibility Specialist will send the family a notice of termination and offer them an informal hearing.

Exceptions to these policies may be made by the Director of Housing Programs if the family is able to document an emergency situation that prevented them from providing verification or if requested as a reasonable accommodation for a person with a disability.

#### Documents Required From the Family

In the notification letter to the family, the HACM will include instructions for the family to provide the following:

1. Documentation of income or no income for all family members;
2. Documentation of all assets;
3. Documentation of any deductions/allowances;
4. Documentation to support claims;
5. Personal Declaration Form completed by head of household;
6. Birth certificate, picture I.D. and Social Security cards; and
7. Three (3) months current rent receipts.

#### Verification of Information

The HACM will follow the verification procedures and guidelines described in this plan. Verifications for reexaminations must be less than 120 days old.

#### Tenant Rent Increases

If tenant rent increases, a thirty (30) day notice is mailed to the family prior to the scheduled effective date of the annual recertification.

If less than thirty (30) days are remaining before the scheduled effective date of the annual recertification, the tenant rent increase will be effective on the first of the month following the thirty (30) day notice.

If there has been a misrepresentation or a material omission by the family, or if the family causes a delay in the reexamination processing, there will be a retroactive increase in rent to the scheduled effective date of the annual recertification.

#### Tenant Rent Decreases

If tenant rent decreases, it will be effective on the anniversary date. If the family causes a delay so that the processing of the reexamination is not complete by the anniversary date, rent change will be effective on the first day of the month following completion of the reexamination processing.

**Reporting Interim Changes**

Program participants must report all changes in household composition within thirty (30) days of the change. This includes additions due to birth, adoption and court-awarded custody. The family must obtain approval from the landlord and the HACM prior to all other additions to the household.

If any new family member is added, family income must include any income of the new family member. The HACM will conduct a reexamination to determine such additional income and will make the appropriate adjustments in the HAP and family unit size.

The U.S. citizenship/eligible immigrant status of additional family members must be declared and verified as required at the first interim or regular recertification after moving into the unit.

**Interim Reexamination Policy**

The HACM will not conduct interim reexaminations when families have an increase in monthly adjusted income of \$200 or less, other than when a new member is added to the household, provided the information was provided within thirty (30) days of the change. Participants in the Family Self Sufficiency (FSS) program are exempt from this rule as increases in income will generate a change in their escrow balance. Families will be required to report all increases in income/assets within thirty (30) days of the increase.

**Decreases in Income**

Participants may report a decrease in income and other changes, which would reduce the amount of tenant rent, such as an increase in allowances or deductions. The HACM must calculate the change if a decrease in income is reported.

Decreases in the tenant portion of the rent will be made effective the first day of the month following the month in which the change was reported, if the change was reported in writing on or before the fifteenth (15<sup>th</sup>) day of the month. If reported after the fifteenth (15<sup>th</sup>) day of the month, the effective date of the tenant portion of rent will be effective on the first day of the second month after the change was reported. If a tenant requests a hardship to the written notification requirement of the interim policy, the Director of Housing Programs or his or her designee may approve such request.

**HACM Errors**

If the HACM makes a calculation error at admission to the program or at an annual reexamination, an interim reexamination will be conducted, if necessary, to correct the error, but the family will not be charged retroactively. Families will be given decreases, when applicable; retroactive to when the decrease for the change would have been effective if calculated correctly.

**Housing Quality Standards (HQS) Requirement**

Participating project-based units must meet or exceed HQS prior to entering into a HAP contract. The participating unit must require \$999 or less in rehabilitation costs to meet HQS in order to be eligible for participation in the project-based existing program.

Once a project-based unit is under a HAP contract, the HACM will inspect a minimum of 25% of the units within a site/development to determine annual HQS compliance. Any time that significant fail items are identified, the HACM will inspect all units

within that project annually.

**Family Choice to Move with Continued Assistance**

A family who resides in a project-based unit for at least twelve (12) months may move with continued assistance with a tenant based Housing Choice Voucher or its equivalent.

If the family wishes to move, but no voucher is available at that time, the family will be given the next available voucher, ahead of other families on the waiting list. Targeted vouchers (i.e., Family Unification Program) cannot be used for this purpose.

Families that reside in a unit with PBV assistance for at least twelve (12) months can exercise the portability feature within the guidelines for administration of the tenant-based Housing Choice Voucher Program.

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## Chapter 24

### 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, and 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.

The requirements of VAWA that are incorporated into the Housing Choice Voucher Housing Assistance Payment (HAP) Contract and Tenancy Addendum are as follows:

- An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as serious or repeated violations of the lease or other “good cause” for termination of assistance, tenancy, or occupancy rights of a victim of abuse (section 8(o)(7)(C) of the U.S. Housing Act of 1937).
- Criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated individual of the tenant is the victim or threatened victim of that abuse (section 8(o)(7)(D)(i) of the U.S. Housing Act of 1937).
- Notwithstanding the VAWA restriction on admission, occupancy or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, a Housing Authority may terminate assistance to, or an owner or manager may “bifurcate” a lease, or otherwise remove a household member from a lease, without regard to whether a household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members of others. This action may be taken without evicting, removing, terminating assistance to the occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State and local law for the termination of leases or assistance under the Housing Choice Voucher Program (section 8(o)(7)(D)(ii) of the U.S. Housing Act of 1937).
- Nothing in section 8(o)(7)(D)(i) may be construed to limit the authority of a public housing agency, owner or manager, when notified, to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up (section 8(o)(7)(D)(iii) of the U.S. Housing Act of 1937).
- Nothing in section 8(o)(7)(D)(i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant’s household, provided that



the owner, manager or public housing agency does not subject an individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding stand than other tenants in determining whether to evict or terminate (section 8(o)(7)(D)(iv) of the U.S. Housing Act of 1937).

- Nothing in section 8(o)(7)(D)(i) shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than section 8(o)(7)(D)(i) for victims of domestic violence, dating violence, sexual assault, or stalking (section 8(o)(7)(D)(iv) of the U.S. Housing Act of 1937).

**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:
  - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
  - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
  - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that

person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

- *Covered Housing Program* consists of the following HUD programs:
  - Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.
  - Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.
  - Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 *et seq.*), with implementing regulations at 24 CFR part 574.
  - HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 *et seq.*), with implementing regulations at 24 CFR part 92.
  - Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 *et seq.*), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability Assistance program.
  - Multifamily Rental Housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221.
  - Multifamily Rental Housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), with implementing regulations at 24 CFR part 236.
  - HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d) (with regulations at 24 CFR Chapter IX), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f) (with regulations at 24 CFR chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (with implementing regulations at 24 CFR part 882, subpart H).
  - The Housing Trust Fund (12 U.S.C. 4568) (with implementing regulations at 24 CFR part 93).
  - *Cover Housing Provider* refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections and includes PHA's, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities. The program-specific regulations for the covered housing programs identify the individual or entity that carries out the duties and responsibilities of the covered housing provider as set forth in part 5, subpart L. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be the same individual or entity.

- For Project Based Voucher (PBV) program, “covered housing provider,” as such term is used in HUD’s regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) refers to the PHA or owner (as defined in 24 CFR 982.4), as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a). In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while the PHA is the covered housing provider responsible for complying with emergency transfer plan provisions at 24 CFR 5.2005(e).
- VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e *et seq.*).

## **B. NOTIFICATION**

The Housing Authority of the County of Merced (HACM) 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 HACM’s policies. Therefore, if the HACM makes a determination to deny admission to an applicant family, the HACM will include in its notice of denial:

- A statement of the protection against denial provided by VAWA.
- A description of Housing Authority confidentiality requirements.
- A request that an applicant wishing to claim this protection submit to the Housing Authority documentation meeting the specifications below with her or his request for an informal hearing.

## **C. VAWA PROTECTIONS (24 CFR 5.2005)**

### **Notification of Occupancy Rights under VAWA and Certification Form**

The HACM 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 HCV program under 24 CFR part 982, the project-based voucher program under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases of the Section 8 project-based program under 24 CFR parts 880, 882, 883, 884, 886, as well as project-based section 8 provided in connection with housing under part 891, 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.

**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 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.

**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.

### **Remedies Available to Victims**

#### **Lease bifurcation**

The HACM 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 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 HACM 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 HACM may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (Item 2 and 3). The HACM 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 HACM 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 HACM 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 HACM accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault or stalking, the HACM 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 HACM 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 HACM may allow, the HACM may deny relief for protection under VAWA.

**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

**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)

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## Chapter 25

### VETERANS AFFAIRS SUPPORTIVE HOUSING PROGRAM (VASH) FEDERAL REGISTER VOL. 77, NO. 57

#### A. BACKGROUND

The HUD-VASH program combines HUD HCV rental assistance for homeless veterans with case management and clinical services provided by the Department of Veterans Affairs (VA) at its medical centers and within the community. Ongoing VA case management, health, and other supportive services will be made available to homeless veterans at Veterans Affairs Medical Center supportive services across the nation.

The HUD-VASH HCV program is ~~will be~~ administered in accordance with the ~~regular HCV program requirements (24 CFR Section 982), except as described below~~ regular HCV program requirements. However, the Act allows HUD to waive or specify alternative requirements for any provision of any statute or regulation that HUD administers in connection with this program to be necessary for the effective delivery and administration of the HUD- VASH program. In addition, the HACM may request additional statutory or regulatory waivers that it determines are necessary for the effective delivery and administration of the program. The HACM will accept the Certificate of Release or Discharge from Active Duty (DD-214) or the VA-verified Application for Health Benefits (10-10EZ) as verification of SSN and for proof-of –age purposes for veterans applying for or participating in the HUD VASH program. These documents will be accepted in lieu of birth certificates or other required documentation. If photo identification is required, VA issued photo identification cards will be accepted by the HACM in lieu of another type of government issued photo identification. These cards may also be used to verify SSNs and date of birth.

Income-targeting requirements of section 16(b) of the 1937 Act, as well as 24 CFR 982.201(b)(2), do not apply for HUD-VASH families. To expedite the leasing process, HACM may pre-inspect available units that veterans may be interested in leasing, in order to maintain a pool of eligible units. However, the veteran must be free to select his/her unit and cannot be steered to these units. The HACM has adopted the published HUD-VASH guidelines and will continue to develop separate policy documents for the HUD-VASH program as needed.

#### B. VASH CASE MANAGEMENT REQUIREMENTS

As a condition of HCV rental assistance, a HUD-VASH eligible family must receive case management services from the local VAMC as published in the Federal Register, Vol. 77, No. 57, dated Friday, March 23, 2012. A HUD-VASH participant family's HCV assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC. However, a VAMC determination that the participant family no longer requires case management is not grounds for termination of assistance. In such case, and at its option, the HACM may offer the family continued HCV assistance through one of its regular vouchers, to make available the HUD-VASH voucher for another eligible family referred by the VAMC. If the HACM has no available vouchers, the family will retain its HUD–VASH voucher until such time as the HACM has an available voucher for the family. If the family no longer requires case management, there

are no portability restrictions. Normal portability rules apply.

**C. INCOME ELIGIBILITY (24 CFR 982.201)**

The HACM must determine income eligibility for HUD-VASH families in accordance with 24 CFR 982.201 ~~or a low income family eligible for VASH who needs the voucher as a reasonable accommodation.~~ Income-targeting requirements of section 16(b) of the 1937 Act, as well as 24 CFR 982.201(b)(2), do not apply for HUD-VASH families so that Housing Authorities can effectively serve the eligible population specified in the various appropriations acts; that is, homeless veterans, who may be at a variety of income levels, including low income. The HACM may, however, choose to include the admission of extremely low-income HUD-VASH families in its income targeting numbers for the fiscal year in which these families are admitted. In conformance with normal program rules, PHAs may not deny admission to a family with zero income and must consider hardship circumstances before charging a minimum rent in accordance with 24 CFR 5.630(b).

~~Families whose Annual Income exceeds the applicable income limit will be denied admission.~~

**D. INITIAL TERM OF ~~VOUCHER ASSISTANCE~~ (24 CFR 982.303(a))**

HUD-VASH vouchers are issued with an initial search term of 60 days. Extensions, suspensions, and progress reports will remain under the policies of the HACM's Administrative Plan, but will apply after the minimum 120-day initial search term.

Recognizing the challenges that HUD-VASH participants may face with their housing search, HUD-VASH vouchers must have an initial search term of at least 120 days. The initial search term must be at least 60 days, shall not apply, since the initial term must be at least 120 days. Any extensions, suspensions, and progress reports will remain, but will apply after the minimum 120-day initial search term. Under the HCV program, voucher participants must enter into an initial lease with the owner for one year, unless a shorter term would improve housing opportunities for the tenant and the shorter term is a prevailing market practice.

**PORTABILITY OF HUD-VASH VOUCHERS**

~~An eligible HUD-VASH voucher holder wishing to exercise portability to another jurisdiction must choose a location where there is a VAMC to provide case management services with an available VASH voucher or portability is not allowed.~~

**E. PORTABILITY- WHILE RECEIVING VA CASE MANAGEMENT (PIH 2011 53(HA))**

~~An eligible HUD-VASH voucher holder wishing to exercise portability to another jurisdiction must choose a location where there is a VAMC to provide case management services with an available VASH voucher or portability is not allowed.~~

**1. Portability Moves Where Case Management is provided by the Initial PHA (HACM) Partnering VAMC.**

If the family moves under portability, and the initial PHA'S (HACM) partnering VAMC will still be able to provide the necessary case management services due to its

proximity to the partnering VAMC, the receiving PHA must process the move in accordance with the portability procedures of 24 CFR 982.355. If the receiving PHA has VASH vouchers available, they may absorb or administer the voucher. Both the VAMC and Initial PHA (HACM) must be in support of the family's relocation before approving the family to port.

2. Portability Moves Where Case Managements is provided by the Receiving PHA's Partnering VAMC.

If a family wants to move to another jurisdiction where it will not be possible for the initial PHA's (HACM) partnering VAMC to provide case management services, the VAMC must first approve the family's relocation and then determine that the HUD-VASH family could be served by another VAMC that is participating in VASH and the receiving PHA must have a HUD-VASH voucher available for this family. In these cases, the families must be absorbed by the receiving PHA either as a new admission (if the family did not participate in the initial PHA's (HACM) VASH program) or as a portability move-in (after initial leasing in the initial PHA's (HACM) jurisdiction). When the VASH voucher is absorbed by the receiving PHA, the initial PHA's (HACM) HUD-VASH voucher will become available to lease to a new HUD-VASH eligible family, as determined by the partnering VAMC, and the absorbed family will count toward the number of HUD-VASH slots awarded to the receiving PHA.

A HUD-VASH family can move within the VAMC's area as long as case management can still be provided, as determined by the VA. The VA must always be consulted prior to a move to ensure that case management will continue to be provided. If the receiving PHA does not have a HUD-VASH program, they must bill the initial PHA. If the receiving PHA does have a HUD-VASH program, they may absorb the family or bill the initial PHA. A HUD-VASH family can move outside of the VAMC's catchment area if the referring VAMC confirms that the new VAMC has an available case management slot. The receiving PHA must have a HUD-VASH program and the HUD-VASH family must be absorbed.

If a HUD-VASH family wishes to move under portability and the Veteran no longer requires case management, they do not need to move to a community in which case management can be provided. The receiving PHA does not need to be a HUD-VASH PHA, and they may choose to bill the initial PHA or absorb the Veteran with a regular voucher. If they choose to bill the initial PHA, they must enter/maintain "VASH" on line 2n of form HUD-50058.

#### **F. DENIAL OF ASSISTANCE**

At initial intake, the VASH family can only be determined ineligible due to:

- Income limitations or
- Having any member of the household subject to a lifetime registration requirement under a state sex offender registration program.

The HACM cannot deny assistance to a Veteran that previously participated in a Public Housing program (Housing Choice Voucher or Conventional) and still owes money.

In any case where the HACM decides to deny assistance to the family, the HACM must give the family written notice which states:

- The reason(s) for the denial of assistance
- The family's right to request an informal review to be held before denial of assistance.
- The date by which a request for an informal review must be received by the HACM.

Once the applicant becomes a resident, the resident must follow all of the HACM rules including the family obligations (See Chapter 15 entitled "Denial or Termination of Assistance").

As a condition of HCV rental assistance, a HUD-VASH eligible family must receive the case management services from the VAMC. Therefore, a HUD-VASH family's HCV assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC. However, a VAMC determination that the participant family no longer requires case management is not grounds for termination of assistance.

#### **G. TERMINATION OF ASSISTANCE**

HUD has not established any alternative requirements for termination of assistance for HUD-VASH participants. However, prior to terminating HUD-VASH participants, HUD strongly encourages PHAs to exercise their discretion under 24 CFR 982.552(c)(2) and consider all relevant circumstances of the specific case, including granting reasonable accommodations for persons with disabilities in accordance with 24 CFR part 8, as well as including the role of the case manager and the impact that ongoing case management services can have on mitigating the conditions that led to the potential termination, prior to determining whether to terminate assistance. In addition, a HUD-VASH participant family must not be terminated after admission, for a circumstance or activity that occurred before admission and was known to the PHA, but could not be considered at the time of admission due to the HUD-VASH Operating Requirements. The HACM can terminate the family's assistance only for program violations that occur after the family's admission to the voucher program.

#### **H. DISCHARGE FROM THE HUD-VASH PROGRAM**

Graduation from case management is a goal of the HUD-VASH program in order to help the Veteran achieve optimal independent functioning and the ability to live independently in the community. Some Veterans are able to achieve this goal more quickly than others. Case

managers, in consultation with the Veteran, determine if the Veteran achieves this milestone and may then discharge the Veteran from the case management portion of the program.

If a HUD-VASH participant or family no longer needs case management, as determined by the VA case manager, the family is still eligible for rental assistance under the tenant-based HCV Program. In cases where case management is no longer needed, the HACM can use one of its own vouchers, if available, to continue assisting this family and free up a voucher for another HUD-VASH eligible family. If a tenant-based voucher is not

available, the family continues utilizing the HUD-VASH voucher. If a HUD-VASH voucher is switched from a HUD-VASH voucher to a tenant-based voucher, the family is not subject to the HACM's waiting list because the family is already a participant in the HACM's HCV tenant-based program.

Some Veterans may not discharge in a successful manner. If a Veteran refuses to participate in the case management portion of the program, the voucher can be revoked by the HACM following the applicable regulations and processes. The case manager, as much as possible, works to link the Veteran with treatment or resources, as appropriate to the Veteran's individual needs.

**I. VASH VOUCHER ISSUANCE**

Since VASH vouchers are for homeless Veterans, the vouchers must always remain with the Veterans. In the case of divorce or separation, the voucher remains with the Veteran.

If the Veteran dies, the voucher would remain with the remaining members of the tenant family. The family will continue to utilize the HUD-VASH voucher.

Once the family has begun participation in the VASH Program, and the Department of VAMC has determined that the Family no longer requires case management, they will not be considered for termination of assistance. In such cases, the HACM will offer the family continued assistance through one of its tenant-based HCV vouchers, in order to free up a VASH voucher for another eligible family referred by the Department of VMAC. If the HACM has no tenant-based HCV voucher to offer the family, the family will retain their VASH voucher until such time as the HACM has an available tenant-based HCV voucher to offer the family.

## GLOSSARY

### ACRONYMS USED IN SUBSIDIZED HOUSING

<b>AAF</b>	Annual Adjustment Factor. A factor published by HUD in the Federal Register which is used to compute annual rent adjustment.
<b>ACC</b>	Annual Contributions Contract
<b>ACOP</b>	Admissions and Continued Occupancy Policy
<b>ADA</b>	Americans with Disabilities Act
<b>AHAP</b>	Agreement to enter into a Housing Assistance Payment Contract
<b>AIDS</b>	Acquired immune deficiency syndrome
<b>AMI</b>	Area Median Income
<b>CDBG</b>	Community Development Block Grant
<b>CFR</b>	Code of Federal Regulations. Commonly referred to as “the regulations.” The CFR is the compilation of Federal rules which are first published in the Federal Register and define and implement a statute. (published federal rules that define and implement laws; commonly referred to as “the regulations”)
<b>COP</b>	Contract of Participation
<b>CPI</b>	Consumer Price Index. The CPI is published monthly by the Department of Labor as an inflation indicator.
<b>EID</b>	Earned Income Disallowance
<b>EITC</b>	Earned Income Tax Credit
<b>EIR</b>	Earned Income Range
<b>EIV</b>	Enterprise Income Verification System
<b>ELI</b>	Extremely Low Income
<b>FAQ</b>	Frequently Asked Questions
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FHA</b>	Federal Housing Administration
<b>FHEO</b>	Fair Housing and Equal Opportunity



<b>FICA</b>	Federal Insurance Contributions Act - Social Security taxes
<b>FMR</b>	Fair Market Rent
<b>FR</b>	Federal Register
<b>FSS</b>	Family Self Sufficiency
<b>FUP</b>	Family Unification Program
<b>FTS</b>	Full Time Student
<b>FY</b>	Fiscal Year
<b>FYE</b>	Fiscal Year End
<b>GAO</b>	Government Accounting Office
<b>GR</b>	Gross Rent
<b>HA</b>	Housing Authority or Housing Agency
<b>HACM</b>	Housing Authority the County of Merced
<b>HAP</b>	Housing Assistance Payment
<b>HCDA</b>	Housing and Community Development Act
<b>HCVP</b>	Housing Choice Voucher Program
<b>HOH</b>	Head of Household
<b>HQS</b>	Housing Quality Standards
<b>HUD</b>	The Department of Housing and Urban Development or its designee.
<b>HUDCLIPS</b>	HUD Client Information and Policy System
<b>HURRA</b>	Housing and Urban/Rural Recovery Act of 1983; resulted in most of the 1984 HUD regulation changes to definition of income, allowances, rent calculations
<b>IPA</b>	Independent Public Accountant
<b>IRA</b>	Individual Retirement Account
<b>IRS</b>	Internal Revenue Service
<b>ITSP</b>	Individual Training and Services Plan
<b>JTPA</b>	Job Training Partnership Act

<b>LAP</b>	Language Access Plan
<b>LBP</b>	Lead Based Paint
<b>LEP</b>	Limited English Proficiency
<b>LI</b>	Low Income
<b>LIHTC</b>	Low Income Housing Tax Credit
<b>MOA</b>	Memorandum of Agreement
<b>MOU</b>	Memorandum of Understanding
<b>MOV</b>	Methods of Verification
<del>MTCS</del>	<del>Multi-family Tenant Characteristics System (now the Form HUD-50058 submodule of the PIC System)</del>
<b>MSA</b>	Metropolitan Statistical Area established by the U.S. Census Bureau
<del>OGC</del>	<del>HUD's Office of General Counsel</del>
<b>OIG</b>	Office of the Inspector General
<b>OMB</b>	Office of Management and Budget
<b>PASS</b>	Plan to Achieve Self-Support
<b>PBA</b>	Project Based Assistance
<b>PBC</b>	Project Based Contract
<b>PBV</b>	Project Based Voucher
<b>PCC</b>	Program Coordinating Committee
<b>PHA</b>	Public Housing Agency
<b>PIH</b>	Public <del>and Indian Housing</del> Information Center
<b>PII</b>	Personally Identifiable Information
<b>PMSA</b>	A Primary Metropolitan Statistical Area established by the U.S. Census Bureau

<b>PS</b>	Payment Standard
<b>QC</b>	Quality Control
<b>QHWRA</b>	Quality Housing and Work Responsibility Act of 1998
<b>RAB</b>	Resident Advisory Board
<b>RAD</b>	Rental Assistance Demonstration
<b>REAC</b>	Real Estate Assessment Center
<b>RFP</b>	Request for Proposal
<b>RFTA</b>	Request for Tenancy Approval
<b>RIGI</b>	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
<b>RRP</b>	Rental Rehabilitation Program
<b>SAVE</b>	Systematic Alien Verification for Entitlements
<b>SEMAP</b>	Section Eight Management Assessment Program
<b>SRO</b>	Single Room Occupancy
<b>SSA</b>	Social Security Administration
<b>SSI</b>	Supplemental Security Income
<b>SSN</b>	Social Security Number
<b>SWICA</b>	State Wage Information Collection Agency
<b>TANF</b>	Temporary Assistance for Needy Families
<b>TPV</b>	Tenant protection vouchers
<b>TR</b>	Tenant Rent
<b>TDD</b>	Telecommunications Device for the Deaf
<b>TTP</b>	Total Tenant Payment
<b>TTY</b>	TeleTYpe
<b>UA</b>	Utility Allowance
<b>UFAS</b>	Uniform Federal Accessibility Standards
<b>UIV</b>	Upfront Income Verification

<b>URP</b>	Utility Reimbursement Payment
<b>USCIS</b>	U.S. Citizenship and Immigration Services (formerly INS)
<b>VASH</b>	Veterans Affairs Supportive Housing
<b>VAWA</b>	Violence Against Women Reauthorization Act of 2013
<b>VG</b>	Verification Guidance
<b>VLI</b>	Very Low Income
<b>WIC</b>	Women and Infant Children

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**GLOSSARY OF TERMS IN SUBSIDIZED HOUSING****1937 ACT**

The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.)

**ADMINISTRATIVE PLAN**

The HUD required written policy of the HACM governing its administration of the Housing Choice Voucher tenant-based programs. The Administrative Plan and any revisions must be approved by the HACM's board and a copy submitted to HUD as a supporting document to the HACM Agency Plan.

**ABSORPTION**

In portability, the point at which a receiving HACM stops billing the initial HACM for assistance on behalf of a portability family. The receiving HACM uses funds available under the receiving HACM's consolidated Annual Contributions Contract (ACC).

**ACC RESERVE ACCOUNT (FORMERLY "PROJECT RESERVE")**

Account established by HUD from amounts by which the maximum payment to the HACM under the consolidated ACC (during a HACM fiscal year) exceeds the amount actually approved and paid. This account is used as the source of additional payments for the program.

**ADA**

Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)

**ADJUSTED INCOME**

Annual income, less allowable HUD deductions.

**ADMINISTRATIVE FEE**

Fee paid by HUD to the HACM for administration of the program.

**ADMINISTRATIVE FEE RESERVE (Formerly "Operating reserve")**

Account established by HACM from excess administrative fee income. The administrative fee reserve must be used for housing purposes.

**ADMISSION**

The effective date of the first Housing Assistance Payment (HAP) contract for a family (first day of initial lease term). This is the point when the family becomes a participant in the program.

**ADULT**

Any person age 18 years or over.

**ANNUAL BUDGET AUTHORITY**

The maximum annual payment by HUD to a HACM for a funding increment.

**ANNUAL CONTRIBUTIONS CONTRACT (ACC)**

A written contract between HUD and a HACM. Under the contract, HUD agrees to provide funding for operation of the program, and the HACM agrees to comply with HUD requirements for the program.

**AFFILIATED INDIVIDUAL**

In accordance with VAWA 2013

- A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
- Any individual, tenant, or lawful occupant living in the household of that individual.

**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 participant in the program.

**“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.)

**ASSISTED LIVING FACILITY**

An assisted living facility is a public facility, proprietary facility, or facility of a private nonprofit corporation that:

Is licensed and regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located;

Makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which make available to residents home health care services such as nursing and therapy; and

Provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.

Assisted living facilities may be referred to as residential care facilities, adult care facilities, congregate care facilities or group homes as long as they meet the requirements noted above.

**ASSISTED TENANT**

A tenant who pays less than the market rent as defined in the regulations. Includes tenants receiving rent supplements, Rental Assistance Payments, or HCVP assistance and all other 236 and 221 (d)(3) BMIR tenants, except those paying the 236 market rent or 120% of the BMIR rent, respectively.

**BUDGET AUTHORITY**

An amount authorized and appropriated by Congress for payment to HACM's under the program. For each funding increment in a HACM program, budget authority is the maximum amount that may be paid by HUD to the HACM over the ACC term of the funding increment.

**CHILD CARE EXPENSES**

Amounts paid by the family for the care of minors under 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.

**COMMON SPACE**

In shared housing: space available for use by the assisted family and other occupants of the unit.

**CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT**

(Consolidated ACC) See 24 CFR 982.151.

**CONTIGUOUS MSA**

In portability, an MSA that shares a common boundary with the MSA in which the jurisdiction of the initial HACM is located.

**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.

**CONTRACT**

(See Housing Assistance Payments Contract.)

**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.

**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; or

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 HOUSEHOLD**

A family whose head, including co-head, spouse or sole member is a person who 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 HACM in this Administrative Plan, which is approved by HUD.

**EMANCIPATED MINOR**

A person under the age of 18 years of age who qualifies as an adult under state law.

**EXCEPTION RENT**

In the pre-merger certificate program, an initial rent (contract rent plus any utility allowance) in excess of the published FMR (see Area Exception rent).

**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**

A very low income family whose annual income does not exceed 30% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families.

**FAIR MARKET RENT (FMR)**

The rent including the cost of utilities (except telephone) that would be required to be paid in the housing market area to obtain privately owned existing decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. Fair market rents for existing housing are established by HUD for housing units of varying sizes (number of bedrooms) and are published in the *Federal Register*.

**FAMILY**

A person or group of persons, as determined by the HACM consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program.

**FAMILY OF VETERAN OR SERVICE PERSON**

A family is a "family of veteran or service person" when: the veteran or service person is (a) 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 still remains in the family at least two related persons.

**FAMILY SELF-SUFFICIENCY (FSS) PROGRAM**

The program established by the HACM to promote self-sufficiency of assisted families, including the provision of supportive services.

**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 HACM's subsidy standards.

**FMR/EXCEPTION RENT LIMIT**

The fair market rent published by HUD headquarters. In the voucher program the Housing Authority may adopt a payment standard up to one hundred ten percent (110%) of the FMR.

**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 HACM under the consolidated ACC for the HACM 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.

**HAP CONTRACT**

(See “Housing Assistance Payments Contract”)

**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, country, municipality or other governmental entity or public body authorized to administer the program. The term “HACM” includes an Indian HACM (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 ASSISTANCE PAYMENT**

The monthly assistance payment by a HACM. The total assistance payment consists of a payment made to the owner for rent under the family's lease. An additional payment is made to the family if the total assistance payment exceeds the rent to owner. The additional payment is called a Utility Reimbursement Payment (URP).

**HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT**

A written contract between a HACM and an owner in the form prescribed by HUD headquarters, in which the HACM agrees to make housing assistance payments to the owner on behalf of an eligible family.

**HACM ADMINISTRATIVE AND AGENCY PLAN**

The annual Administrative Plan and the 5-year Agency Plan as adopted by the HACM and approved by HUD in accordance with part 903 of this chapter.

**HOUSING QUALITY STANDARDS (HQS)**

The HUD minimum quality inspection standards for housing assisted under the tenant-based programs.

**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**

Assets disposed of for less than Fair Market Value during two (2) years preceding examination or reexamination.

**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 HACM**

In portability, the term refers to both: A HACM that originally selected a family that later decides to move out of the jurisdiction of the selecting HACM; and a HACM that absorbed a family that later decides to move out of the jurisdiction of the absorbing HACM.

**INITIAL PAYMENT STANDARD**

The payment standard at the beginning of the HAP contract term.

**INITIAL RENT TO OWNER**

The rent to owner at the beginning of the HAP contract term.

**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 HACM's not admit less than the number required by law of families whose income does not exceed 30% 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 HACM (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.

**INTEREST REDUCTION SUBSIDIES**

The monthly payments or discounts made by HUD to reduce the debt service payments and, hence, rents required on Section 236 and 221 (d)(3) BMIR projects. Includes monthly interest reduction payments made to mortgagees of Section 236 projects and front-end loan discounts paid on BMIR projects.

**JURISDICTION**

The area in which the HACM has authority under State and local law to administer the program.

**LANDLORD**

This term means either the owner of the property or his/her representative or the managing agent or his/her representative, as shall be designated by the owner.

**LEASE**

A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the Housing Authority.

**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 HACM 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 eighty percent (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.

**MANUFACTURED HOME**

A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets HQS. A special housing type (see 24 CFR 982.620 and 982.621).

**MANUFACTURED HOME SPACE**

In a manufactured home space rental, the space is leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space (see 24 CFR 982.622 to 982.624).

**MARKET RENT**

The rent HUD authorizes the owner of an FHA insured/subsidized multi-family housing project to collect from families ineligible for assistance. For unsubsidized units in an FHA insured multi-family project in which a portion of the total units receive project-based rental assistance, under the Rental Supplement or Section 202/Section 8 Programs, the Market Rate Rent is that rent approved by HUD and is the Contract Rent. For BMIR units, Market Rent varies by whether the project is a rental or cooperative.

**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 is given to 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 or herbal therapy

**MINIMUM RENT**

An amount established by the HACM between \$0 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 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.

**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 HACM to determine the appropriate number of bedrooms for families of different sizes and compositions.

**OWNER**

Any persons or entity having the legal right to lease or sublease a unit to a participant.

**PARTICIPANT**

A family that has been admitted to the HACM's voucher program. The family becomes a participant on the effective date of the first HAP contract executed by the HACM for the family (first day of initial lease term).

**PAYMENT STANDARD**

The maximum subsidy payment for a family (before deducting the family contribution). The HACM sets a payment standard in the range from 90% to 110% of the current FMR/exception rent limit.

**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.

**PORTABILITY**

Renting a dwelling unit with Housing Choice Voucher tenant-based assistance outside the jurisdiction of the initial HACM.

**PREMISES**

The building or complex in which the dwelling unit is located, including common areas and grounds.

**PRIVATE SPACE**

In shared housing, the portion of a contract unit that is for the exclusive use of an assisted family.

**PROGRAM**

The Housing Choice Voucher tenant-based assistance program under 24 CFR Part 982.

**PROGRAM RECEIPTS**

HUD payments to the HACM under the consolidated ACC, and any other amounts received by the HACM in connection with the program.

**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 HACM) on October 21, 1998; or

For any area outside the jurisdiction of a HACM that is administering a tenant-based program, or where HUD determines that such HACM 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.

**REASONABLE RENT**

A rent to owner that is not more than the rent charged for comparable units in the private unassisted market, and not more than the rent charged for comparable unassisted units in the premises.

**RECEIVING HACM**

In portability, a HACM that receives a family selected for participation in the tenant-based program of another HACM. The receiving HACM issues a voucher and provides program assistance to the family.

**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.

**RENT TO OWNER**

The total monthly rent payable to the owner under the lease for the unit. Rent to owner covers

payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

**RESIDENCY PREFERENCE**

A HACM 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 Public Housing, Housing Choice Voucher assistance, project-based voucher assistance and moderate rehabilitation programs, the responsible entity means the HACM administering the program under an ACC with HUD. For all other Housing Choice Voucher programs, the responsible entity means the Housing Choice Voucher owner.

**SECRETARY**

The Secretary of Housing and Urban Development.

**SECURITY DEPOSIT**

A dollar amount which can be applied to unpaid rent, damages or other amounts to the owner under the lease.

**SEXUAL ORIENTATION**

Sexual Orientation means homosexuality, heterosexuality, or bisexuality.

**SERVICE PERSON**

A person in the active military or naval service (including the active reserve) of the United States.

**SINGLE PERSON**

A person living alone or intending to live alone.

**SPECIAL ADMISSION**

Admission of an applicant that is not on the HACM waiting list or without considering the applicant’s waiting list position.

**SPECIAL HOUSING TYPES**

See Subpart M of 24 CFR 982, which states the special regulatory requirements for SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

**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 HACM 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.

**SUSPENSION/TOLLING**

Stopping the clock on the term of a family's voucher, for such period as determined by the HACM, from the time when the family submits a request for HACM approval to lease a unit, until the time when the HACM approves or denies the request. If the HACM decides to allow extensions or suspensions of the voucher term, the HACM Administrative Plan must describe how the HACM determines whether to grant extensions or suspensions, and how the HACM determines the length of any extension or suspension.

**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 HACM in public housing).

**TOTAL TENANT PAYMENT (TTP)**

The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

**TUITION**

Tuition is the amount of money charged to students for instructional services which may be charged per term, per course, or per credit. Tuition and fees is further defined as the amount of tuition and required fees covering a full academic year most frequently charged to students. These values represent what a typical student would be charged and may not be the same for all students at an institution. If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an entire academic year is used to estimate average tuition. Required fees include all fixed sum charges that are required of a large proportion of all students. The student who does not pay the charges is an exception. Examples of required fees include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).

**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 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 service is 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.

**VACANCY LOSS PAYMENTS**

This applies to contracts effective prior to 10/2/95. When a family vacates its unit in violation of its lease, the owner is eligible for eighty percent (80%) of the contract rent for a vacancy period of up to one additional month (beyond the month in which the vacancy occurred) if the owner notifies the HACM as soon as the owner learns of the vacancy, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

**VERY LOW INCOME FAMILY**

A low-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 Housing Choice 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.

**VOUCHER HOLDER**

A family holding a voucher with an unexpired term (search time).

**VOUCHER PROGRAM**

The Housing Choice Voucher program.

**WAITING LIST ADMISSION**

An admission from the HACM waiting list.

**WAITING LIST**

A list of families organized according to HUD regulations and HACM policy 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 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 the age of 18 years old.

**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.

**HACM**

A Public Housing Agency or an Indian HACM 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 HACM**

A HACM 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 HACM).

**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.

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# Housing Authority of the County of Merced

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



Building opportunities for tomorrow

**Revision Date: October 1, 2017**

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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 (Housing Authority) receives its operating subsidy for the public housing program from the U.S. Department of Housing and Urban Development (HUD). The Housing 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 Housing Authority enters into an Annual Contributions Contract (ACC) with HUD to administer the public housing program. The Housing 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 Housing 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 (Housing 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 Housing Authority's creation and authorization, the general structure of the organization, and the relationship between the Housing 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 Housing Authority for the jurisdiction of Merced County.

The Housing 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 Housing Authority conducts business, and ensures that those policies are followed by Housing 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 Housing Authority are taken through written resolutions, adopted by the Board and entered into the official records of the Housing Authority.

The principal staff member of the Housing Authority is the Executive Director who is selected and hired by the Board. The Executive Director oversees the day-to-day operations of the Housing 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 Housing Authority of the County of Merced 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 Housing Authority is committed to providing excellent service to all public housing applicants, residents, and the public. In order to provide superior service, the Housing 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 Housing 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 Housing Authority's support systems and commitment to our employees and their professional development.

The Housing 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.

### **Housing Authority of the County of Merced'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

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## 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.

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## **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)].

#### 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;
- (3) Training staff;
- (4) Providing notice to LEP persons; and
- (5) 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.

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## 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, and 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**

#### **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-I.I. 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;
- **No other additional family members of live in care attendant may reside in unit with participant;**
- **The live in aide has employment outside of the home; or**

- ~~Another person is residing in the unit who is capable of providing the care for participant.~~

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.

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## 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 members 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].

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## 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) 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. 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.

### Housing Authority Procedure

The Housing Authority will notify residents of their rights under VAWA during the annual recertification process. Additionally, the Housing Authority will notify applicants of their rights and responsibilities under VAWA; a notice will be enclosed in each application packet.

### **Definitions**

As used in VAWA:

The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse **or intimate partner** of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse **or intimate partner**, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

The term *Spouse/Intimate Partner* is a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship. The type of relationship, and the frequency of the interaction between the persons involved in the relationship.

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; and
- The frequency of interaction between the persons involved in the relationship.

The term *sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

The term *stalking* means:

- To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or
- To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
- In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to:
  - (1) that person,
  - (2) a member of the immediate family of that person, or
  - (3) the spouse or intimate partner of that person.

The term *affiliated individual* means, with respect to an individual:

- A spouse, parent, brother, or sister, or child of that individual, or an individual to whom that individual stands in place of a parent **or guardian**; or
- Any individual, tenant, or lawful occupant living in the household of **that** individual.

The term *actual and imminent threat* consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

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.

## Notification

### Housing Authority Procedure

The Housing 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 Housing Authority's policies. Therefore, if the Housing Authority makes a determination to deny admission to an applicant family, the Housing Authority will include in its notice of denial:

- A statement of the protection against denial provided by VAWA.
- A description of Housing Authority confidentiality requirements.
- A request that an applicant wishing to claim this protection submit to the Housing Authority documentation meeting the specifications below with her or his request for an informal hearing (see section 14-I.B).

### VAWA Protections (24 CFR 5.2005)

- The Housing Authority must provide notice to public housing tenants of their rights under VAWA and this subpart, including the right to confidentiality and the exceptions; and
- Housing Authorities must provide notice to owners and management agents of assisted housing, of their rights and obligations under VAWA and this subpart; and
- 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.

- *Applicants*  
Admission to the program shall not be denied 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.
  
- *Tenants*
  - (1) Domestic violence, dating violence, sexual assault, or stalking. An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated lease violation by the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking, or as good cause to terminate the tenancy of, occupancy rights of, or assistance to the victim.
  
  - (2) *Criminal activity related to domestic violence, dating violence, sexual assault, or stalking.* Criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated individual of the tenant is the victim or threatened victim.
  
- *Limitations of VAWA protections.*
  - (1) Nothing in this section limits the authority of the Housing Authority, owner, or management agent to evict a tenant or terminate assistance for a lease violation unrelated to domestic violence, dating violence, sexual assault, or stalking, provided that the Housing Authority, owner, or management agent does not subject such a tenant to a more demanding standard than other tenants in making the determination whether to evict, or to terminate assistance or occupancy rights;
  
  - (2) Nothing in this section may be construed to limit the authority of a Housing Authority, owner, or management agent to evict or terminate assistance to any tenant or lawful occupant if the Housing Authority, owner, or management agent can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the public housing or Section 8 assisted property if that tenant or lawful occupant is not terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat”.
  
  - (3) Any eviction or termination of assistance should be utilized by a Housing Authority, owner, or management agent 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.

## **Documentation**

### *Victim Documentation*

Housing Authority Procedure

An applicant claiming that the cause of an unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, sexual assault, or stalking must provide documentation (1) demonstrating the connection between the abuse and the unfavorable history and (2) naming the perpetrator of the abuse. The documentation may consist of any of the following:

- A statement signed by the victim certifying that the information provided is true and correct and that it describes bona fide incident(s) of actual or threatened domestic violence, dating violence, sexual assault, or stalking.
- 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.
- Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider, an attorney, or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

*Perpetrator Documentation*Housing Authority Procedure

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

- A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the public housing unit.
- Documentation that the perpetrator has successfully completed or is successfully undergoing rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.
- In accordance with VAWA 2013, a record of an administrative agency.
- In accordance with VAWA 2013, documentation from a mental health professional.

**Time Frame for Submitting Documentation**Housing Authority Procedure

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

### **Remedies Available to Victims**

- *Lease bifurcation.* Notwithstanding any Federal, State, or local law to the contrary, a Housing Authority, owner, or management agent may bifurcate a lease, or remove a household member from a lease without regard to whether the household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, or local law for termination of assistance or leases under the relevant public housing, Section 8 Housing Choice Voucher, and Section 8 project-based programs.
- *Court orders.* Nothing in this subpart may be construed to limit the authority of a Housing Authority, owner, or management agent, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and to address the distribution of property among household members in a case where a family breaks up.

### **Housing Authority Confidentiality Requirements**

All information provided to the Housing Authority concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking relating to the victim (including the fact that an individual is a victim of such domestic violence, dating violence, sexual assault, or stalking) shall be kept confidential by the Housing Authority and such information shall not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure (a) is requested or consented to by the victim in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

#### Housing Authority Procedure

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the Housing Authority will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

### **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:



- (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
  - (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.
- (2) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
  - (3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
  - (4) Is regarded as having an impairment means:
    - (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation.
    - (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment.
    - (c) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.

## Chapter 4 APPLICATIONS, WAITING LIST AND TENANT SELECTION

### INTRODUCTION

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.

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## **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 HACM 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 HACM 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).

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## **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-pha.com](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: Homeless Preference:** Families who are referred to the HACM by a partnering homeless service organization that is a member of the Merced County Continuum of Care's centralized/coordinated assessment system and who meet the following criteria:

- An individual or family who lacks a fixed, regular and adequate nighttime residence meaning:
  - ✓ An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state or local government programs for low-income individuals)
  - ✓ An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution
  - ✓ A primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport or camping ground
- Any individual or family who:
  - ✓ Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; **and**
  - ✓ Has no other residence; **and**
  - ✓ Lacks the resources or support networks, e.g. family, friend, and faith-based or other social networks, to obtain other permanent housing

**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 HACM 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 Homeownership 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:

- (i) 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;
- (ii) 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
- (iii) 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

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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 ~~contact the family first by telephone to make the unit offer. If the family cannot be reached by telephone, the family will be notified of a unit offer via first class mail.~~ 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:
  1. Criminal Background Check Certification Form
  2. 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**).

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## **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.

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## 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.)

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**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 ~~five (5)~~ 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.

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

**INTRODUCTION**

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
  - (1) Which are not specifically excluded in this chapter.
  - (2) 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 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(c)(1)].
Head, spouse, or co-head Other adult family members	All sources of income not specifically excluded by the regulations are included
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or co-head)	Earnings above \$480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.

### **Temporarily Absent Family Members**

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit.

#### 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 [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

**Types of Earned Income Not Counted in Annual Income**  
**Temporary, Nonrecurring, or Sporadic Income [24 CFR 5.609(c)(9)]**

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

**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, on the twelve months previous to employment, no more than would be received for 1-hour 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 reexaminations 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.I. 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)].
- 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 spins 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));

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));

- (u) 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.

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## **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.
  - o 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	\$35	10% of monthly gross income
N/A	Welfare rent	N/A	Welfare rent
\$50	Minimum rent	\$50	Minimum 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 Housing 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 Housing 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 flat rent is based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the Housing Authority could promptly lease the public housing unit after preparation for occupancy.
- The Housing 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 Housing 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 Housing Authority does not pay any utility reimbursement.
- The Housing Authority must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the Housing Authority in accordance with this method, and document flat rents offered to families under this method.

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

- An income-based rent is a tenant rent that is based on the family's income and the Housing Authority's policies for determination of such rents.
- The Housing Authority rent policies may specify that the Housing Authority will use percentage of family income or some other reasonable system to determine income-based rents. The Housing 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.

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## 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) 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)]**

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.

<b>Level</b>	<b>Verification Technique</b>	<b>Ranking</b>
<b>6</b>	<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)
<b>5</b>	<b>Upfront Income Verification (UIV)</b> using non-HUD system	<b>Highest</b> (Optional)
<b>4</b>	<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)
<b>3</b>	<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)
<b>2</b>	<b>Oral Third Party Verification</b>	<b>Low</b> (Mandatory if written third party verification is not available)
<b>1</b>	<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 5/6)**

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 Authority's 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) **is** 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 delayed or not possible. 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.

**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:

- a. When the tenant disputes the EIV information and is unable to provide acceptable documentation support his/her dispute (24 CFR 5.236(b));
- b. 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:
  1. Effective dates of income (i.e. employment, unemployment compensation, or social security benefits)
  2. For new employment: pay rate, number of hours worked per week, pay frequency, etc.

Confirmation of change in circumstances (i.e. reduced hours, reduced rate of pay, temporary leave of absence, etc.).



## 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
<ul style="list-style-type: none"> <li>• Certificate of birth, naturalization papers</li> <li>• Church issued baptismal certificate</li> <li>• Current, valid driver's license or Department of Motor Vehicle identification card</li> <li>• U.S. military discharge (DD 214)</li> <li>• U.S. passport</li> <li>• Employer identification card</li> </ul>	<ul style="list-style-type: none"> <li>• Certificate of birth</li> <li>• Adoption papers</li> <li>• Custody agreement</li> <li>• Health and Human Services ID</li> <li>• School records</li> </ul>

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.

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## **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.

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## **PART IV: VERIFYING MANDATORY DEDUCTIONS**

### **7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that the 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.

## 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.

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## 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(1)(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.

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## **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** 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".

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## **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](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:

- A. 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.
- B. 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
- C. 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.

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**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.

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## 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:

- A. 62 years or older;
- B. Is blind or disabled 1, as defined under section 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. Section 416 (i)(1); Section 1382c), and who certify that:
  1. Because of this disability she or he is unable to comply with the service provisions of this subpart, or

2. is a primary caretaker of such an individual;

C. 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.

- D. 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
- E. 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:

- A. Briefly describe the noncompliance.
- B. 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.

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## **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].

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**EXHIBIT 11-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(1) 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.

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## 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.

**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>.

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## **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.

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**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.

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**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.

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## **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:

- (i) 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;
- (ii) 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
  - a. The family does not pursue USCIS appeal or informal hearing rights as provided in this section; or
  - b. USCIS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or
- (iii) 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(l)(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:

- (i) That is on a form adopted by the Housing Authority in accordance with 24 CFR 966.3;
- (ii) 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
- (iii) 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(l)(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(l)(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(l)]**

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(l)(5)(i)(B)]**

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

##### 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.

- a. 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.
- b. 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(l)(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.

- a. A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six (6) months.
- b. 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.
- c. 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(l)(5)(ii)(A)]**

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including 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.

- a. *Immediate vicinity* means within a three-block radius of the premises.
- b. 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.
- c. 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(l)(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.

- a. A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six (6) months.

- b. 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(l)(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.

- a. 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.
- b. 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(l)(2)(i) and 24 CFR 966.4(f)]**

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations, 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:
  - a. Failure to make payments due under the lease; or
  - b. 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:

- a. 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);
- b. Repeated late payment of rent or other charges. Four (4) late payments within a six (6) month period shall constitute a repeated late payment.
- c. Failure to fulfill the following household obligations:
  - (i) 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.
  - (ii) Not to provide accommodations for boarders or lodgers.
  - (iii) 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.
  - (iv) 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.
  - (v) To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety.
  - (vi) 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.
  - (vii) To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner.
  - (viii) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances include elevators.
  - (ix) 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.
  - (x) 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.

- (xi) 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.
- (xii) To assure that no tenant, member of the tenant's household, or guest engages:
  - a. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or
  - b. Any drug-related criminal activity on or off the premises
- (xiii) To assure that no other person under the tenant's control engages in:
  - a. Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or
  - b. 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.

- a. 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.

- b. 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.
- c. Discovery after admission of facts that made the tenant ineligible.
- d. Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income.
- e. 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.
- f. 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.
- g. 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.
- h. 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.
- i. Failure to abide by the provisions of Housing Authority policies.
- j. If the family has breached the terms of a repayment agreement entered into with the Housing Authority.
- k. If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.
- l. 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.

- m. 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(l)(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(l)(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(l)(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(l)(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(i)(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(i)(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(l)(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.

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## **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.

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## **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.

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## **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.
3. The right to a private hearing unless the complainant requests a public hearing.
  4. 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.
  5. 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.

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## **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(1)(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.

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## 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 sitting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage.

### **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**

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. The flat rent should be equal to the estimated rent for which the Housing Authority could promptly lease the public housing unit after preparation for occupancy.

The Housing Authority must use a reasonable method to determine flat rents. In determining flat rents, Housing Authorities must consider the following:

- Location
- Quality
- Unit size
- Unit type
- Age of property
- Amenities at the property and in immediate neighborhood
- Housing services provided
- Maintenance provided by the Housing Authority
- Utilities provided by the Housing Authority

#### **Review of Flat Rents**

The Housing Authority must ensure that flat rents continue to mirror market rent values [24 CFR 960.253].

##### 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 lower 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 Housing Authority in accordance with this method.

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## **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.

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## **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.C. 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.

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## **Chapter 17**

### **NO SMOKING (TOBACCO-FREE) PROCEDURE**

#### **17-I.A. INTRODUCTION**

To ensure quality of air and the safety of all public housing residents, the Housing Authority of the County of **Merced** (Housing Authority) has declared that all public housing communities have a No Smoking Procedure.

In accordance with **Federal Register 87430**, 24 CFR 903.7(b)(3), smoking (including, but not limited to, smoking cigarettes, **pipes**, cigars, **Kretek**, **ENDS e-cigarettes**, **vaping**, **water pipe tobacco such as hookahs**, and **chewing tobacco**) is prohibited in all the Housing Authority public housing communities.

This includes all indoor areas including but not limited to residential units and common areas; and within twenty-**five (25)** feet of said buildings and outdoor areas (apartments, entry ways, walkways, grassed areas, picnic areas, parking lots, and private vehicles parked on Housing Authority property).

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 No Smoking Procedure applies to all visitors, residents, contractors, volunteers, and vendors. Tenants and members of the household shall be responsible to enforce this No Smoking Procedure as to their guests, invitees, and visitors to their residential units.

#### **17-I.B. Responsibilities**

It is the responsibility of the Housing Authority staff to educate residents and visitors about the No Smoking Procedure. 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 Housing 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 Housing 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, Housing 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 Housing Authority designated tobacco-free properties and common areas.

#### **17-I.C. Violations**

A violation of the Tobacco-Free Procedure will be considered a material violation of the residential lease. The Housing Authority will utilize the following process to address the violations of the No Smoking Procedure:

1<sup>st</sup> Violation – Verbal Warning. The Housing Authority may provide smoking cessation materials.

2<sup>nd</sup> Violation – A written letter of warning will be given and the Housing 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.

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.

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<sup>1</sup> Funding award is based on the oldest funding source used in the construction phase.

- a. 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</b>	<b>Maximum Number 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.

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**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

HACM – Housing Authority of the County of Merced

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 S32HOP – 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

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## **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**

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 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 or 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 re-certifications.

**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.

DRAFT

<b>Certifications of Compliance with PHA Plans and Related Regulations (Standard, Troubled, HCV-Only, and High Performer PHAs)</b>	<b>U.S. Department of Housing and Urban Development</b> Office of Public and Indian Housing <b>OMB No. 2577-0226</b> <b>Expires 02/29/2016</b>
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**PHA Certifications of Compliance with the PHA Plan and Related Regulations including  
Required Civil Rights Certifications**

*Acting on behalf of the Board of Commissioners of the Public Housing Agency (PHA) listed below, as its Chairman or other authorized PHA official if there is no Board of Commissioners, I approve the submission of the \_\_\_ 5-Year and/or X Annual PHA Plan for the PHA fiscal year beginning 10/2017, hereinafter referred to as "the Plan", of which this document is a part and make the following certifications and agreements with the Department of Housing and Urban Development (HUD) in connection with the submission of the Plan and implementation thereof:*

1. The Plan is consistent with the applicable comprehensive housing affordability strategy (or any plan incorporating such strategy) for the jurisdiction in which the PHA is located.
2. The Plan contains a certification by the appropriate State or local officials that the Plan is consistent with the applicable Consolidated Plan, which includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice, for the PHA's jurisdiction and a description of the manner in which the PHA Plan is consistent with the applicable Consolidated Plan.
3. The PHA has established a Resident Advisory Board or Boards, the membership of which represents the residents assisted by the PHA, consulted with this Resident Advisory Board or Boards in developing the Plan, including any changes or revisions to the policies and programs identified in the Plan before they were implemented, and considered the recommendations of the RAB (24 CFR 903.13). The PHA has included in the Plan submission a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the Plan addresses these recommendations.
4. The PHA made the proposed Plan and all information relevant to the public hearing available for public inspection at least 45 days before the hearing, published a notice that a hearing would be held and conducted a hearing to discuss the Plan and invited public comment.
5. The PHA certifies that it will carry out the Plan in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990.
6. The PHA will affirmatively further fair housing by examining their programs or proposed programs, identifying any impediments to fair housing choice within those programs, addressing those impediments in a reasonable fashion in view of the resources available and work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement and by maintaining records reflecting these analyses and actions.
7. For PHA Plans that includes a policy for site based waiting lists:
  - The PHA regularly submits required data to HUD's 50058 PIC/IMS Module in an accurate, complete and timely manner (as specified in PIH Notice 2010-25);
  - The system of site-based waiting lists provides for full disclosure to each applicant in the selection of the development in which to reside, including basic information about available sites; and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types at each site;
  - Adoption of a site-based waiting list would not violate any court order or settlement agreement or be inconsistent with a pending complaint brought by HUD;
  - The PHA shall take reasonable measures to assure that such a waiting list is consistent with affirmatively furthering fair housing;
  - The PHA provides for review of its site-based waiting list policy to determine if it is consistent with civil rights laws and certifications, as specified in 24 CFR part 903.7(c)(1).
8. The PHA will comply with the prohibitions against discrimination on the basis of age pursuant to the Age Discrimination Act of 1975.
9. The PHA will comply with the Architectural Barriers Act of 1968 and 24 CFR Part 41, Policies and Procedures for the Enforcement of Standards and Requirements for Accessibility by the Physically Handicapped.
10. The PHA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968, Employment Opportunities for Low-or Very-Low Income Persons, and with its implementing regulation at 24 CFR Part 135.

11. The PHA will comply with acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR Part 24 as applicable.
12. The PHA will take appropriate affirmative action to award contracts to minority and women's business enterprises under 24 CFR 5.105(a).
13. The PHA will provide the responsible entity or HUD any documentation that the responsible entity or HUD needs to carry out its review under the National Environmental Policy Act and other related authorities in accordance with 24 CFR Part 58 or Part 50, respectively.
14. With respect to public housing the PHA will comply with Davis-Bacon or HUD determined wage rate requirements under Section 12 of the United States Housing Act of 1937 and the Contract Work Hours and Safety Standards Act.
15. The PHA will keep records in accordance with 24 CFR 85.20 and facilitate an effective audit to determine compliance with program requirements.
16. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and 24 CFR Part 35.
17. The PHA will comply with the policies, guidelines, and requirements of OMB Circular No. A-87 (Cost Principles for State, Local and Indian Tribal Governments), 2 CFR Part 225, and 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments).
18. The PHA will undertake only activities and programs covered by the Plan in a manner consistent with its Plan and will utilize covered grant funds only for activities that are approvable under the regulations and included in its Plan.
19. All attachments to the Plan have been and will continue to be available at all times and all locations that the PHA Plan is available for public inspection. All required supporting documents have been made available for public inspection along with the Plan and additional requirements at the primary business office of the PHA and at all other times and locations identified by the PHA in its PHA Plan and will continue to be made available at least at the primary business office of the PHA.
22. The PHA certifies that it is in compliance with applicable Federal statutory and regulatory requirements, including the Declaration of Trust(s).

Housing Authority of the County of Merced  
 PHA Name

CA023  
 PHA Number/HA Code

X Annual PHA Plan for Fiscal Year 2017

\_\_\_\_\_ 5-Year PHA Plan for Fiscal Years 20\_\_\_\_ - 20\_\_\_\_

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Name of Authorized Official  Rosa Vazquez	Title  Executive Director
Signature	Date

**Civil Rights Certification**  
*(Qualified PHAs)*

 U.S. Department of Housing and Urban Development  
 Office of Public and Indian Housing  
 OMB Approval No. 2577-0226  
 Expires 02/29/2016

**Civil Rights Certification**
**Annual Certification and Board Resolution**

Acting on behalf of the Board of Commissioners of the Public Housing Agency (PHA) listed below, as its Chairman or other authorized PHA official, I approve the submission of the 5-Year PHA Plan for the PHA of which this document is a part, and make the following certification and agreements with the Department of Housing and Urban Development (HUD) in connection with the submission of the public housing program of the agency and implementation thereof:

The PHA certifies that it will carry out the public housing program of the agency in conformity with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990, and will affirmatively further fair housing by examining their programs or proposed programs, identifying any impediments to fair housing choice within those program, addressing those impediments in a reasonable fashion in view of the resources available and working with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement and by maintaining records reflecting these analyses and actions.

Housing Authority of the County of Merced  
 PHA Name

CA023  
 PHA Number/HA Code

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

Rosa Vazquez

Signature

Title

Executive Director

Date

**Housing Authority of The County of Merced**

405 U STREET MERCED, CA 95341

PHONE (209) 722-3501

FAX (209) 722-7364 Housing Choice Voucher Program (HCV)

FAX (209) 722-8954 Public Housing (PH)

FAX (209) 722-0106 Administration

TDD 711 or 800-855-7100

VISIT OUR WEB SITE AT: [www.merced-pha.com](http://www.merced-pha.com)

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Attachment G



PENDING  
RESIDENT  
ADVISORY  
BOARD  
(RAB)  
REVIEW



**Certification by State or Local  
Official of PHA Plans Consistency  
with the Consolidated Plan or  
State Consolidated Plan  
(All PHAs)**

U. S Department of Housing and Urban Development  
Office of Public and Indian Housing  
OMB No. 2577-0226  
Expires 2/29/2016

**Certification by State or Local Official of PHA Plans  
Consistency with the Consolidated Plan or State Consolidated Plan**

I, Steve Carrigan, the City Manager,  
*Official's Name* *Official's Title*

certify that the 5-Year PHA Plan and/or Annual PHA Plan of the  
Housing Authority of the County of Merced,  
*PHA Name*

is consistent with the Consolidated Plan or State Consolidated Plan and the Analysis of  
Impediments (AI) to Fair Housing Choice of the  
City of Merced  
*Local Jurisdiction Name*

pursuant to 24 CFR Part 91.

Provide a description of how the PHA Plan is consistent with the Consolidated Plan or State  
Consolidated Plan and the AI.

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I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title
Steve Carrigan	City Manager
Signature	Date



**Certification by State or Local  
Official of PHA Plans Consistency  
with the Consolidated Plan or  
State Consolidated Plan  
(All PHAs)**

U. S Department of Housing and Urban Development  
Office of Public and Indian Housing  
OMB No. 2577-0226  
Expires 2/29/2016

**Certification by State or Local Official of PHA Plans  
Consistency with the Consolidated Plan or State Consolidated Plan**

I, Glen Campora, the Assistant Deputy Director,  
*Official's Name* *Official's Title*

certify that the 5-Year PHA Plan and/or Annual PHA Plan of the  
Housing Authority of the County of Merced,  
*PHA Name*

is consistent with the Consolidated Plan or State Consolidated Plan and the Analysis of  
Impediments (AI) to Fair Housing Choice of the  
State of California  
*Local Jurisdiction Name*

pursuant to 24 CFR Part 91.

Provide a description of how the PHA Plan is consistent with the Consolidated Plan or State  
Consolidated Plan and the AI.

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I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title
Glen Campora	Assistant Deputy Director
Signature	Date

**Capital Fund Program Five-Year Action Plan**

U.S Department of Housing and Urban Development

Office of Public and Indian Housing

OMB No. 2577-0266

**Expires 4/30/2011**

<b>Part I: Summary</b>						
			Locality			
<i>The Housing Authority of the County of Merced</i>		<i>Merced, Merced Co, California</i>			<input type="checkbox"/> Original 5-Year Plan <input checked="" type="checkbox"/> <b>Revision No:</b>	
A.	Development Number and Name	Year 1 FFY 2017	Work Statement for Year 2 FFY Grant: 2018 PHA FY: 2018	Work Statement for Year 3 FFY Grant: 2019 PHA FY: 2019	Work Statement for Year 4 FFY Grant: 2020 PHA FY: 2020	Work Statement for Year 5 FFY Grant: 2021 PHA FY: 2021
	Physical Improvements Subtotal	<b>Annual Statement</b>				
	PHA-Agency Wide Site Improvements		283,302.00	225,740.00	145,869.00	195,432.00
	PHA-Agency Wide Unit Modification		358,392.00	415,954.00	495,825.00	446,262.00
	PHA-Agency Wide Fees & Costs		10,000.00	10,000.00	10,000.00	10,000.00
	PHA-Agency Wide Non Dwelling Structures		0.00	0.00	0.00	0.00
			651,694.00	651,694.00	651,694.00	651,694.00

form HUD-50075.2 (4/2008)