

# Admissions and Continued Occupancy Plan

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For the Public Housing Program

**Proposed Effective Date: 01/01/2025**



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# Introduction

## ABOUT THE ACOP

### REFERENCES CITED IN THE ACOP

Authority for PHA policies is derived from many sources. Primary among these sources are regulations and guidance issued by HUD. State law also directs PHA policy. State law must be followed where such law exists and does not conflict with federal regulations. In the absence of legal requirements or HUD guidance, industry practice may lead to PHA policy. Finally, the public housing lease will affect PHA policy and therefore must be consistent with federal and state laws and regulations.

### HUD

HUD provides the primary source of PHA policy through federal regulations, HUD Notices and handbooks. Compliance with federal regulations, current HUD Notices and HUD handbooks is mandatory.

HUD provides nonmandatory guidance to PHAs through HUD published guidebooks. Expired HUD Notices and handbooks also provide guidance for PHA policy. Following HUD guidance is optional, as long as PHA policies comply with federal law, federal regulations and mandatory policy. Because HUD has already determined that the guidance it provides is consistent with mandatory policies, PHA reliance on HUD guidance provides the PHA with a “safe harbor.”

Content contained on the HUD website can provide further clarification of HUD policies. For example, FAQs on the HUD website can provide direction on the application of federal regulations to a specific pattern.

### HOTMA

The Housing Opportunity through Modernization Act (HOTMA) of 2016 makes changes to the Public Housing program that streamline income and asset verifications and recertification schedules. The proposed Admissions and Continued Occupancy Plan includes HOTMA compliant updates as required by HUD, however, many of these changes require extensive updates to HUD reporting software prior to implementation. The HOTMA compliance date will be determined following HUD guidance regarding the timing of the necessary HUD software updates. HAWC will notify all program participants of the HOTMA compliance date once it is determined. Throughout the ACOP, policies that will be effective at the HOTMA compliance date are labeled. They may be visually identified by a grey background or a grey page border.

### State Law

Where there is no mandatory federal guidance, PHAs must comply with state law, if it exists. Where state law is more restrictive than federal law, but does not conflict with it, the PHA should follow the state law.

**Industry Practice**

Where no law or HUD authority exists on a particular subject, industry practice may support PHA policy. An industry practice is a way of doing things that is followed by most housing authorities.

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## RESOURCES CITED IN THE ACOP

The ACOP cites several documents. Where a document or resource is cited frequently, it may be abbreviated. Where it is cited only once or twice, the ACOP may contain the entire name of the document or resource. Following is a key to abbreviations used for various sources that are frequently cited in the ACOP, and a list of references and document locations that are referenced in the ACOP or that may be helpful to you.

### Public Housing Occupancy Guidebook

In June 2020 HUD began issuing a new version of the *Public Housing Occupancy Guidebook* chapter-by-chapter. Unlike the previous version of the guidebook in which chapters were numbered, the new version includes chapter names, but no numbers. As the new version of the guidebook has not yet been fully released, and since the previous version of the guidebook contains guidance not found in the new version, the policy cites both versions of the guidebook. Therefore, where the *Public Housing Occupancy Guidebook* is cited in the policy, the citation will make a distinction between the “old” and “new” versions of the guidebook. The “old” version of the guidebook will continue to be cited as *PH OCC GB* with a chapter/page reference (example: PH OCC GB, p. 5-4). If HUD has also released a new chapter on the same topic with information that either adds new information or updates existing information from the previous guidebook, the new guidebook will be cited as *New PH OCC GB* with a chapter title and page reference (example: New PH OCC GB, *Lease Requirements*, p. 11).

On September 29, 2023, HUD issued Notice PIH 2023-27 to implement sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). The notice supersedes relevant portion of the guidebook, specifically the chapters on eligibility and occupancy, income determinations, and reexaminations. Where chapters have not been altered by the HOTMA implementation notice, the model policy continues to site the Public Housing Occupancy Guidebook.

### Abbreviations

Throughout the ACOP, abbreviations are used to designate certain documents in citations. The following is a table of abbreviations of documents cited by the ACOP.

Abbreviation	Document
CFR	Code of Federal Regulations
HUD-50058 IB	HUD-50058 Instruction Booklet
PH OCC GB	Public Housing Occupancy Guidebook, June 2003
New PH OCC GB	Public Housing Occupancy Guidebook, Various dates of release
RHIIP FAQs	Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions
VG	Verification Guidance, March 2004 (attachment to PIH Notice 2004-1)

## Resources and Where to Find Them

The HUD website is <https://www.hud.gov/>.

Guidebooks, handbooks, and other HUD resources may be found at the HUDClips website: [https://www.hud.gov/program\\_offices/administration/hudclips](https://www.hud.gov/program_offices/administration/hudclips)

Following is a list of resources helpful to the PHA or referenced in the ACOP, and the online location of each.

<b>Document and Location</b>
Code of Federal Regulations <a href="http://www.ecfr.gov">http://www.ecfr.gov</a>
Enterprise Income Verification (EIV) System PHA Security Procedures <a href="https://www.hud.gov/sites/documents/EIVSECGUIDEPHA.PDF">https://www.hud.gov/sites/documents/EIVSECGUIDEPHA.PDF</a>
Executive Order 11063 <a href="https://www.archives.gov/federal-register/codification/executive-order/11063.html">https://www.archives.gov/federal-register/codification/executive-order/11063.html</a>
Federal Register <a href="https://www.federalregister.gov/">https://www.federalregister.gov/</a>
HOTMA Final Rule <a href="https://www.federalregister.gov/documents/2023/02/14/2023-01617/housing-opportunity-through-modernization-act-of-2016-implementation-of-sections-102-103-and-104?utm_campaign=subscription+mailing+list&amp;utm_source=federalregister.gov&amp;utm_medium=email">https://www.federalregister.gov/documents/2023/02/14/2023-01617/housing-opportunity-through-modernization-act-of-2016-implementation-of-sections-102-103-and-104?utm_campaign=subscription+mailing+list&amp;utm_source=federalregister.gov&amp;utm_medium=email</a>
HOTMA Implementation Notice, PIH 2023-27 <a href="https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-27pihn.pdf">https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-27pihn.pdf</a>
Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004 <a href="https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf">https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf</a>
Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007 <a href="https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf">https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf</a>
Notice PIH 2010-26, Nondiscrimination and Accessibility Notice <a href="http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf">http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf</a>
Notice PIH 2017-12, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System <a href="https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF">https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF</a>
Public Housing Occupancy Guidebook, June 2003 <a href="https://www.hud.gov/sites/documents/DOC_10760.PDF">https://www.hud.gov/sites/documents/DOC_10760.PDF</a>



VAWA Resources

<https://www.hud.gov/vawa>

The HAWC MTW Supplement, PHA Plan, Language Access Plan, and other policies are located on the Washington County Department of Housing Services website linked here:

<https://www.washingtoncountyor.gov/housing/plans-policies-reports>

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# Chapter 1: Overview of the Program and Plan

## **Introduction**

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

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

There are three parts to this chapter:

Part I: HAWC. This part includes a description of the HAWC, 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: HAWC**

### ***1-I.A. Overview***

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

### ***1-I.B. Organization and Structure of HAWC***

Public housing is funded by the federal government and administered by the Housing Authority of Washington County (HAWC) for the jurisdiction of Washington County, Oregon.

The officers of HAWC are known as commissioners or, collectively, as the Board of Commissioners (Board). This document will hitherto 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 PHA conducts business, and ensures that those policies are followed by PHA 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 HAWC are taken through written resolutions, adopted by the board and entered into the official records of HAWC and the County.

The principal administrative officer of HAWC is the Director, who is selected and hired by the Washington County. The Director oversees the day-to-day operations of HAWC and is directly responsible for carrying out the policies established by the commissioners. The Director's duties include hiring, training, and supervising the PHA's staff, as well as budgeting and financial planning for the agency. Additionally, the Director is charged with ensuring compliance with federal and state laws, and program mandates.

## **1-I.C. HAWC Strategic Framework**

### **Vision**

We envision a Washington County where everyone has an affordable home with the supports and opportunities each of us needs to thrive.

### **Mission**

The Department of Housing Services creates pathways out of homelessness, promotes housing stability, and invests in affordable communities for Washington County and our residents.

### **Values**

- **Equity:** We center racial equity and promote equitable access for all to an array of housing opportunities.
- **Responsiveness:** We are committed to meeting the diverse needs of the community we serve and adapting in response to changing conditions.
- **Collaboration:** We work in partnership with the people we serve, other public agencies, non-profit organizations, private businesses and our neighbors.
- **Accountability:** We believe in transparency and being good stewards of public resources.
- **Sustained impact:** We take the long view through a commitment to deliberate, strategic and holistically sustainable approaches.

### **Equity Statement**

To achieve our vision of a community where everyone has an affordable home with the supports and opportunities they need to thrive, we must work to advance racial equity. Communities of color have been systematically excluded from opportunities to own property, achieve financial security and create generational wealth through centuries of racist and unjust policies and practices. Washington County residents also face barriers to housing because of other characteristics such as immigration status, disability and age. Eliminating these disparities requires that we address barriers that create inequities in housing opportunity while prioritizing services to populations disproportionately impacted by these disparities. We will deploy intentional strategies to advance racial equity while working to increase access to housing opportunities for all who face barriers to housing in our community.

### ***1-I.D. HAWC's Commitment to Ethics and Service***

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

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing in good repair – in compliance with program uniform physical condition standards – for very low- and low-income families.
- Achieve a healthy mix of incomes in its public housing developments by attracting and retaining higher income families and by working toward deconcentration of poverty goals.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational, and other human services needs.
- Promote fair housing and the opportunity for very low- and low-income families of all races, ethnicities, national origins, religions, ethnic backgrounds, and with all types of disabilities, to participate in the public housing program and its services.
- Create positive public awareness and expand the level of family and community support in accomplishing the HAWC'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 HAWC's support systems and commitment to our employees and their development.

HAWC 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 (the “Act”) is responsible for the birth of federal housing program initiatives, known as public housing. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing for low-income residents. There have been many changes to the program since its inception in 1937.

The Housing Act of 1965 established the availability of federal assistance, administered through local public agencies, to provide rehabilitation grants for home repairs and rehabilitation. This act also created the federal Department of Housing and Urban Development (HUD).

The Housing Act of 1969 created an operating subsidy for the public housing program for the first time. Until that time, public housing was a self-sustaining program.

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

### ***1-II.B. Public Housing Program Basics***

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

The job of the HAWC pursuant to HUD regulations is to provide decent, safe, and sanitary housing, in good repair, to low-income families at an affordable rent. HAWC screens applicants for public housing and, if they are found eligible and accepted, the HAWC offers the applicant a unit. If the applicant accepts the offer, the HAWC 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 HAWC as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit. [24 CFR 966.53]. The Public Housing

Occupancy Guidebook refers to tenants as “residents.” The terms “tenant” and “resident” are used interchangeably in this policy. Additionally, this policy uses the term “family” or “families” for residents or applicants, depending on context.

Since HAWC owns the public housing development, HAWC is the landlord. HAWC 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 HAWC policies.

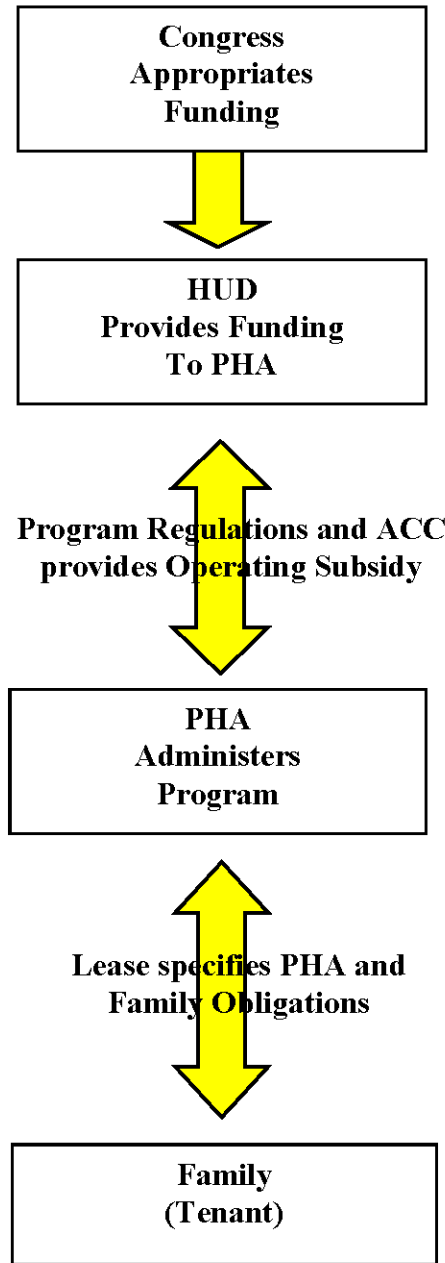
### ***1-II.C. Public Housing Partnerships***

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

In addition to the ACC, the PHA and family must also comply with federal regulations and other HUD publications and directives. For the program to work and be successful, all parties involved – HUD, the PHA, and the tenant – play an important role.

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

## The Public Housing Relationships



### What does HUD do?

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

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

### **What does the HAWC do?**

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

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

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

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

- Comply with the terms of the lease
- Provide HAWC with complete and accurate information, determined by HAWC to be necessary for administration of the program
- Cooperate in attending all appointments scheduled by the HAWC
- Allow HAWC to inspect the unit at reasonable times and after reasonable notice
- Take responsibility for care of the housing unit, including any violations of uniform physical condition standards caused by the family
- Not engage in drug-related, alcohol-related or violent other criminal activity



- Notify HAWC with a 30-day written notice before moving or termination of the lease
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit or assign the lease
- Promptly notify HAWC of any changes in family composition or income within (7) days of the change.
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.
- Take care of the housing unit and report maintenance concerns to HAWC promptly.

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

### ***1-II.D. Applicable Regulations***

Applicable regulations include:

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

## **PART III: The Admissions and Continued Occupancy Policies**

### ***1-III.A. Overview and Purpose of The Policy***

The ACOP is the HAWC'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 HAWC'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. HAWC is responsible for complying with all changes in HUD regulations pertaining to public housing. If such changes conflict with this plan, HUD regulations will have precedence.

### **1-III.B. Contents of the Policy**

Unlike the housing choice voucher program, HUD regulations for public housing do not contain a list of what must be included in the ACOP. However, individual regulations contain requirements of inclusion in the HAWC's written policy. At a minimum, the ACOP plan should cover HAWC policies on these subjects:

- The organization of the waiting list and how families are selected and offered available units, including any HAWC admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the HAWC waiting list (Chapters 4 and 5)
- Transfer policies and the circumstances under which a transfer would take precedence over an admission (Chapter 12)
- Standards for determining eligibility, suitability for tenancy, and the size and type of the unit needed (Chapters 3 and 5)
- Procedures for verifying the information the family has provided (Chapter 7)
- The method for achieving deconcentration of poverty and income-mixing of public housing developments (Chapter 4)
- Grievance procedures (Chapter 14)
- Policies concerning payment by a family to the HAWC of amounts the family owes the HAWC (Chapter 15 and 16)
- Interim redeterminations of family income and composition (Chapter 9)
- Policies regarding community service requirements; (Chapter 11)
- Policies and rules about safety and ownership of pets in public housing (Chapter 10).

## **New Approach to Policy Development**

HUD has developed an approach to monitoring HAWC that emphasizes the importance of consistency in operation and decision-making. The ACOP supports that goal by clearly setting forth HAWC's operating policies.

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

HUD makes a distinction between:

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

HUD expects HAWC to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies HAWC has adopted. The Admissions and Continued Occupancy Policy is the document that contains and clarifies PHA Policy. HUD's new direction adds additional emphasis to the need for a clearly written and comprehensive ACOP to guide staff in the clear and consistent application of policy.

HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. Therefore, following HUD guidance in the preparation of PHA Policy, even though it is not mandatory, provides HAWC with a "safe harbor." If HAWC adopts its own optional policy, it must make its own determination that such policy is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than that suggested by HUD, but HAWC should carefully think through those decisions and be able to articulate how their policy is consistent with federal laws, regulations and mandatory policy.

### **1-III.C. Updating and Revising the Policy**

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

#### **PHA Policy**

HAWC will review and update the ACOP as needed, to reflect changes in regulations, HAWC operations, or when needed to ensure staff consistency in operation.

## Chapter 2: Fair Housing and Equal Opportunity

### **Introduction**

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

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

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

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

**Part III: Prohibition of Discrimination Against Limited English Proficiency Persons.** This part details the obligations of the PHA 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**

#### ***2-1.A. Overview***

Federal laws require HAWC to treat all applicants and tenant families equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. HAWC will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- Violence Against Women Reauthorization Act of 2005 (VAWA)
- 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.

## PHA Policy

In addition to nondiscrimination based on the federally mandated protected classes, HAWC will not discriminate on the basis of the following locally mandated protected classes:

Oregon Protected Classes: Federal protected classes plus the ones below

- Legal source of income
- Marital status
- Sexual orientation
- Gender identity

Beaverton: Federal and State protected classes plus the ones below

- Type of occupation
- Age over 18

Hillsboro: Federal and State protected classes plus the one below

- Domestic partnership

## ***2-I.B. Nondiscrimination***

Federal regulations prohibit discrimination against certain protected classes. State and local requirements, as well as HAWC policies, can prohibit discrimination against additional classes of people.

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

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

## PHA Policy

HAWC will not use any of these factors to:

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

- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class

## **Providing Information to Families**

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

## ***2-I.C. Discrimination Complaints***

### **General Housing Discrimination Complaints**

If an applicant or tenant family believes that any family member has been discriminated against by the PHA, the family should advise the PHA. The PHA should make every reasonable attempt to determine whether the applicant or tenant family's assertions have merit and take any warranted corrective action.

In all cases, the PHA will advise the family that they may file a fair housing complaint if the family feels they have been discriminated against under the Fair Housing Act.

#### **PHA Policy**

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

Within 10 business days of receiving the complaint, the PHA will investigate and attempt to remedy discrimination complaints made against the PHA. The PHA will also advise the family of their right to file a fair housing complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The fair housing poster, posted in conspicuous and accessible locations in PHA lobbies, will reference how to file a complaint with FHEO.

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

### **Complaints under the Equal Access Final Rule [Notice PIH 2014-20]**

Notice PIH 2014-20 requires an articulated complaint process for allegations of discrimination under the Equal Access Final rule. The Equal Access Final Rule requires that PHAs provide equal access regardless of marital status, gender identity, or sexual orientation. The PHA will be informed on these obligations by the HUD Field Office or FHEO when an Equal Access complaint investigation begins.

#### **PHA Policy**

Applicants or tenant families who believe that they have been subject to unlawful discrimination based on marital status, gender identity, or sexual orientation under the Equal Access Rule may notify the PHA either orally or in writing.

Within 10 business days of receiving the complaint, the PHA will provide a written notice to those alleged to have violated the rule. The PHA will also send a written notice to the

complainant informing them that notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

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

Within 10 business days following the conclusion of the PHA's investigation, the PHA will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.

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

### **VAWA Complaint Processing [Notice FHEO 2023-01]**

A complainant may, not later than one year after an alleged VAWA violation has occurred or terminated, file a complaint with FHEO alleging such violation. If there is a violation that began prior to a year before the complaint is filed, but it continues into the one-year time period, HUD will accept the complaint. FHEO will investigate the complaint if it is timely and FHEO otherwise has jurisdiction. If a complaint is filed more than one year after the alleged violation occurred or terminated, FHEO may, but is not required to, investigate the allegations under the additional authority and procedures described in FHEO 2023-01.

Complaints do not need to allege a violation of the Fair Housing Act for FHEO to accept and investigate the complaint.

#### **PHA Policy**

Applicants or tenant families who wish to file a VAWA complaint against the PHA may notify the PHA either orally or in writing.

The PHA will advise the family of their right to file a VAWA complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The PHA will inform the family that not later than one year after an alleged VAWA violation has occurred or terminated, applicants and tenants who believe they have been injured by a VAWA violation or will be injured by such a violation that is about to occur may file a VAWA complaint using FHEO's online complaint form via mail, email, or telephone.

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

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

## **PART II: Policies Related to Persons with Disabilities**

### ***2-II.A. Overview***

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

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

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

#### **PHA Policy**

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

“Any individual with a disability or other medical need who needs accommodation with respect to this correspondence should inform the Department.”

### ***2-II.B. Definition of Reasonable Accommodation***

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

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

### **Types of Reasonable Accommodations**

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

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



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

### ***2-II.C. Request for an Accommodation***

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

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

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

#### **PHA Policy**

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

### ***2-II.D. Verification of Disability***

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

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

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

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to HAWC, HAWC must verify that the person meets the definition of a person with

a disability, and that the limitations imposed by the disability require the requested accommodation.

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

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

### ***2-II.E. Approval/Denial of a Requested Accommodation***

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

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

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

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

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

### PHA Policy

HAWC will evaluate and respond to all requests for Reasonable Accommodation in accordance with its Reasonable Accommodation policy (see Addendum A to this Plan).

## ***2-II.F. Program Accessibility for Persons with Hearing or Vision Impairments***

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

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

### PHA Policy

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

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 HAWC 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***

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

- Notice PIH 2006-13
- 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

HAWC's policies concerning physical accessibility must be readily available to applicants and resident families. They can be found in three key documents:

- This policy, the Admissions and Continued Occupancy Policy, describes the key policies that govern HAWC's responsibilities with regard to physical accessibility.

- Notice PIH 2006-13 summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- The PHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of PHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Notice PIH 2010-26 contains specific information on calculating the percentages of units for meeting UFAS requirements.

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***

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

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

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

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

In addition, HAWC 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

Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons, published January 22, 2007, in the *Federal Register*.

HAWC will take affirmative steps to communicate with people who need services or information in a language other than English in accordance with its Limited English Proficiency (LEP) Plan (see Addendum B of this Plan).

LEP persons are defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this Admissions and Continued Occupancy Policy, LEP persons are public housing applicants and resident families, and parents and family members of applicants and resident families.

In order to determine the level of access needed by LEP persons, HAWC 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 HAWC and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on HAWC.

### **2-III.B. Oral Interpretation**

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, HAWC will provide competent interpretation services free of charge upon request to the LEP person. The only exception to this rule is when an appointment is scheduled and confirmed, but the applicant or participant fails to attend the scheduled and confirmed appointment. When this occurs, the applicant or participant may be charged the amount HAWC is billed for the missed appointment.

#### **PHA Policy**

HAWC 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, HAWC will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents.

HAWC may allow the LEP persons to bring their own interpreter to a meeting. However, it is the policy of HAWC to ensure effective communications between family members and HAWC staff. Generally, HAWC will not allow an individual under the age of 18 to act as an interpreter. Therefore, HAWC reserves the right to refuse to use such an interpreter if it appears that such an interpreter may impede effective communication between the family and HAWC staff. In such cases, HAWC staff will request the services of a third party to do provide interpretation services.

### **2-III.C. Written Translation**

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

#### **PHA Policy**

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

1. HAWC will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
2. If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, HAWC 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**

HAWC has completed the four-factor analysis and developed a written LEP Plan to address the identified needs of the LEP populations it serves.

#### **Exhibit(s)**

#### ***EXHIBIT 2-1: Definition of a Person With a Disability Under Federal Civil Rights Laws***

[24 CFR Parts 8.3 and 100.201]

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

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

The phrase “physical or mental impairment” includes:

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

dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

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

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

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

The definition of a person with disabilities does not include:

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

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

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

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

## Chapter 3: Eligibility

### **Introduction**

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

To be eligible for the public housing program:

The applicant family must:

- Qualify as a family as defined by HUD and HAWC.
- 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 HAWC's collection and use of family information as provided for in HAWC-provided consent forms.

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

This chapter contains three parts:

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

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

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

### **Part I: Definitions of Family and Household Members**

#### ***3-1.A. Overview***

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



### **3-I.B. Family and Household**

[24 CFR 5.105(a)(2), 24 CFR 5.403, FR Notice 02/03/12, Notice PIH 2014-20, Notice PIH 2023-27, and FR Notice 2/14/23]

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

#### **Family**

To be eligible for admission, an applicant must qualify as a family. Family as defined by HUD, includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; an otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or a group of persons residing together. Such group includes, but is not limited to, a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, and the remaining member of a tenant family. The PHA has the discretion to determine if any other group of persons qualifies as a family.

*Gender Identity* means actual or perceived gender characteristics.

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

#### **PHA Policy**

A family also includes:

- Two or more persons who intend to share residency whose income and resources are available to meet the family's needs.
- Two or more persons who intend to share residency whose income and resources are available to meet the family's needs and who have a history as a family unit or show evidence of a stable family relationship.
- Two or more elderly or disabled persons living together, or one or more elderly, near elderly or disabled persons living with one or more live-in aides is a family.

A child who is temporarily away from home because of placement in foster care is considered a member of the family. This provision only pertains to the foster child's temporary absence from the home, and is not intended to artificially enlarge the space available for other family members.

During an initial move in, requests to increase the unit size for a family with a child or children temporarily away from home because of placement in foster care or other care facilities, including extenuating circumstances, that have a future move in date for the child or family member greater than 10 calendar days cannot be approved prior to the actual date the child or family member is returned to the home.

In order to consider the absent child or children in the determination of unit size, HAWC must receive a notarized statement from the agency/facility that the temporarily absent child or family member will return to live in the unit within 10 days from the date the family moves into the assisted unit and will continue to live in the assisted unit for a period not less than 183 consecutive days.

A single person family may be:

- An elderly person.
- A displaced person.
- A person with a disability. (Individuals may not be considered disabled for eligibility purposes solely on the basis of any drug or alcohol dependence.)
- A remaining member of a tenant family.
- Any other single person.

A single person seeking custody of, or adoption of a child under the age of 18 years, must provide evidence of a reasonable likelihood of success prior to Public Housing admission. If HAWC determines there is not a reasonable likelihood of success, the individual shall be allowed to retain their place on the waiting list with preferences (if applicable) and original date and time of application, until custody is secured.

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 HAWC's permission, live in a public housing unit, such as live-in aides, foster children, and foster adults.

## **Types of Applicants with Preference over "Other Singles":**

Elderly, disabled and displaced families with up to two members will be given a selection priority over all "other single" applicants regardless of Preference status.

"Other Single(s)" denotes a one-person household in which the individual member is neither elderly, nor disabled, nor displaced by government action. Such applicants will be placed on the waiting list in accordance with their date and time of applications, but cannot be selected for assistance before any elderly family, disabled family, or displaced single regardless of any preferences.

## ***3-I.C. Family Break-Up and Remaining Member of Tenant Family***

### **Family Break-up**

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

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, stalking, and human trafficking see section 16-VII.D of this ACOP.)

- If a court determines the disposition of property between members of the assisted family, the PHA is bound by the court's determination of which family members continue to receive assistance.

### **PHA Policy**

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

When a family on the waiting list splits into two otherwise eligible families due to divorce or legal separation, and the new families both claim the same placement on the waiting list, and there is no court determination, HAWC will make the decision taking into consideration the following factors:

- Which family member applied as head of household.
- Which family unit retains the children or any disabled or elderly members.
- Restrictions that were in place at the time the family applied.
- Role of domestic violence in the split.
- Recommendations of social service agencies or qualified professionals such as children's protective services.

Documentation of these factors is the responsibility of the applicant families. If either or both of the families do not provide the documentation, they may be denied placement on the waiting list for failure to supply information requested by HAWC.

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, HAWC will abide by the court's determination.

### **Remaining Member of a Tenant Family**

[24 CFR 5.403]

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of a resident family who remains in the unit when other members of the family have left the unit [PH Occ GB, p. 26]. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

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

### **3-I.D. Head of Household**

[24 CFR 5.504(b)]

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

#### **PHA Policy**

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

### **3-I.E. Spouse, Co-head, and Other Adult**

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

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

#### **PHA Policy**

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

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

#### **PHA Policy**

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

*Other adult* means a family member, other than the head, spouse, or cohead, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults [HUD-50058 IB, p. 14].

### **3-I.F. Dependents and Minors**

[24 CFR 5.603]

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

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

## **Joint Custody of Dependents**

### **PHA Policy**

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family 51 percent or more of the time. "51 percent of the time" is defined as 183 days of the year, which do not have to run consecutively.

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, HAWC will make the determination based on available documents such as court orders, school enrollment, 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 (1) each family member that is an FTS, other than the head, spouse, or co-head, qualifies the family for a dependent deduction and (2) the income of such an FTS is treated differently from the income of other family members.

### ***3-I.H. Elderly and Near-Elderly Persons, and Elderly Family***

#### **Elderly Persons**

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

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

A *near-elderly* person is a person who is 50-61 years of age [24 CFR 945.105].

#### **Elderly Family**

An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person [24 CFR 5.403]. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

### **3-I.I. Persons with Disabilities and Disabled Family**

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

#### **Persons with Disabilities**

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

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

#### **Disabled Family**

A *disabled family* is one in which the head, spouse, or co-head is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

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

### **3-I.J. Guests**

[24 CFR 5.100]

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

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

#### **PHA Policy**

A resident family must notify HAWC when overnight guests will be staying in the unit for more than seven (7) consecutive days. A guest cannot remain in a unit longer than fourteen (14) consecutive days or a total of thirty (30) cumulative calendar days during any 12-month period without the prior consent of HAWC.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure expected to last 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 51 percent of the time, are not subject to the time limitations of guests as described above.

Former residents who have been evicted are not permitted as overnight guests. Under no circumstances may a guest be a registered sex offender or a person convicted of any felony drug possession, manufacturing or distribution.

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***

[24 CFR 5.603]

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

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

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

#### **PHA Policy**

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

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

A foster child or foster adult may be allowed to reside in the unit if their presence would not overcrowd the unit.

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

### ***3-I.L. Absent Family Members***

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

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

##### **PHA Policy**

A member of the household will be considered “temporarily absent” if they will be out of the household no more than three (3) consecutive months, or 120 non-consecutive days, during any 12-month period.

A member of the household will be considered “permanently absent” if they will be out of the household at least 90 days, consecutive or non-consecutive, during any 12-month period.

Absences exceeding 90 days will be reviewed by HAWC to determine whether or not to consider the family member as temporarily or permanently absent.

#### **Absent Students**

##### **PHA Policy**

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to HAWC indicating that the student has established a separate household or the family declares that the student has established a separate household. Such information will include, but not be limited to:

- Photo identification or state issued driver’s license with an address that differs from the household; or
- Enrollment paperwork reflecting a different address

#### **Absences Due to Placement in Foster Care**

[24 CFR 5.403]

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].



### **PHA Policy**

If a child has been placed in foster care, HAWC will verify with the appropriate agency whether and when the child is expected to be returned to the home.

Generally, If the agency verifies that the child(ren) is expected to return to the home in no more than six months, the child(ren) will be considered members of the household. If the agency verifies that it reasonably believes the child(ren) will be placed in foster care for more than six months, the child(ren) will be considered permanently absent from the household.

If the agency indicates that a condition of the child(ren) returning to the household is the provision of proper sleeping space for the child(ren), HAWC may consider the children as part of the household for the purpose of determining unit bedroom size; however, if the child(ren) is not returned within 180 days, HAWC may reduce the unit bedroom size of the household.

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

#### **PHA Policy**

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

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

#### **PHA Policy**

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted in the total household income.

HAWC will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co-head qualifies as an elderly person or a person with disabilities.

### **Absences Due to Incarceration**

#### **PHA Policy**

A sole member of the household incarcerated for more than 90 days will be considered permanently absent and removed from the lease.

Any member of the household other than the sole member may be considered permanently absent if incarcerated for 2 consecutive months or more.

Household members absent due to incarceration may not be eligible for rental assistance upon release from custody, dependent upon the nature of the criminal activity that resulted in the incarceration. Refer to Chapter 12 for HAWC's policies regarding criminal activity and termination of assistance.

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

### **PHA Policy**

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

## ***3-1.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].

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

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

### **PHA Policy**

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

- Is determined by HAWC 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).

The live-in aide or aides will be included when determining household bedroom size eligibility as described in chapter five.

Relatives are not automatically excluded from being live-in aides, but they must meet all the elements in the live-in aide definition described above. HAWC may require the family to complete a certification designating a relative as a caregiver, rather than a member of the family.

A live-in aide may only reside in the unit with the approval of HAWC. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social

worker, or case worker. The verification provider must certify that a live-in aide is needed for the care of the family member who is elderly, near-elderly (50-61) or disabled.

Verification must include the hours the care will be provided.

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

- The person has engaged in or been convicted of criminal conduct including fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program and HAWC upon consideration of the nature, severity and recency of such criminal conduct determines that the person poses a demonstrable risk to resident safety and/or resident or HAWC property;
- The person currently owes rent or other amounts to HAWC for any reason, or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.
- The person has been terminated from a rental assistance program for violation of Family Obligations, fraud, or corrupt or criminal conduct in connection with the program.
- The person has been convicted, and, or, evicted from a unit assisted under the Housing Act of 1937 due to drug-related or violent criminal conduct within the last three years and HAWC upon consideration of the nature, severity and recency of such criminal conduct determines that the person poses a demonstrable risk to resident safety and/or property.
- The person has been convicted of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the controlled Substance Act (21 USC 802).drug-related criminal activity, violent criminal activity, or any criminal activity against persons or property that threatens health, safety, and/or welfare of other persons, or that would likely interfere with the right to peaceful enjoyment of the premises of neighbors and/or other residents of the premises.
- The person has at any time been convicted of any form of sexual crime, or crimes against minor children, or have a history of convictions for any form(s) of sexual crime or crimes against minor children and HAWC, upon consideration of the nature, severity and recency of such criminal conduct, determines that the person poses a demonstrable risk to resident safety and/or property; additionally, per 24 CFR 5.856, HAWC prohibits admission to federally assisted housing if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, HAWC will perform necessary criminal history background checks in the State where the housing is located and in other States where the household members are known to have resided.
- The person has been convicted of any degree of murder, or has a history of convictions of any degree of murder and HAWC, upon consideration of the nature, severity and recency of such criminal conduct, determines that the person poses a demonstrable risk to resident safety and/or property.
- The person owes any outstanding amounts of money to any PHA.

## **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 80 percent of the median income for the area, adjusted for family size.

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

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

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

#### **Using Income Limits for Eligibility**

[24 CFR 960.201]

Income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be a low-income family. Income and net family assets of household members are excluded when determining income eligibility; however, household members are considered for purposes of unit size and subsidy standards.

#### **Using Income Limits for Targeting**

[24 CFR 960.202(b)]

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

If admissions of extremely low-income families to HAWC's housing choice voucher program during a HAWC fiscal year exceed the 75 percent minimum targeting requirement for that program, such

excess shall be credited against HAWC's public housing basic targeting requirement for the same fiscal year.

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

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

For discussion of how income targeting is used in tenant selection, see Chapter 4.

### ***3-II.B. Citizenship or Eligible Immigration Status***

[24 CFR 5, Subpart E]

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

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

#### **Declaration**

[24 CFR 5.508]

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who 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 HAWC to request additional documentation of their status, such as a passport.

### **PHA Policy**

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

## **Eligible Noncitizens**

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

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

## **Ineligible Noncitizens**

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. HAWC 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 Eligibility Families**

A family is eligible for admission as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 14 for a discussion of informal hearing procedures.

## **Ineligible Families**

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

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

### **PHA Policy**

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

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

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

Informal hearing procedures are contained in Chapter 14.

## **Timeframe for Determination of Citizenship Status**

[24 CFR 5.508(g)]

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

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

### **PHA Policy**

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

## ***3-II.C. Social Security Numbers***

[24 CFR 5.216 and 5.218, Notice PIH 2018-24]

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation

necessary to verify each SSN. A detailed discussion of acceptable documentation is provided in Chapter 7.

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

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

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

### ***3-II.D. Family Consent to Release of Information***

[24 CFR 5.232]

HUD requires each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign form HUD-9886, Authorization for the Release of Information Privacy Act Notice, the form HUD-52675, Debts Owed to Public Housing Agencies and Terminations, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements. The consent form remains effective until the family is denied assistance, assistance is terminated, or the family provides written notification to revoke consent.

The PHA must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow the PHA to obtain information that the PHA has determined is necessary in administration of the public housing program [24 CFR 960.259(a) and (b) and 24 CFR 5.232(a)].

However, this does not apply if the applicant or participant, or any member of their family, revokes their consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy that revocation of consent to access financial records will result in denial or termination of assistance or admission [24 CFR 5.232(c)].

#### **PHA Policy**

The PHA has established a policy that the family's revocation of consent to allow the PHA to access records from financial institutions will result in denial of admission.

### ***3-II.E. EIV SYSTEM SEARCHES***

[EIV FAQs; EIV System Training 9/30/20; and Notice PIH 2023-27]



## **Existing Tenant Search**

Prior to admission to the program, the PHA must search for all household members using the EIV Existing Tenant Search module. The PHA must review the reports for any SSA matches involving another PHA or a multifamily entity and follow up on any issues identified. The PHA must provide the family with a copy of the Existing Tenant Search results if requested. At no time may any family member receive duplicative assistance.

If the tenant is a new admission to the PHA, and a match is identified at a multifamily property, the PHA must report the program admission date to the multifamily property and document the notification in the tenant file. The family must provide documentation of move-out from the assisted unit, as applicable.

### **PHA Policy**

The PHA will contact the other PHA or owner identified in the report to confirm that the family has moved out of the unit and obtain documentation of current tenancy status, including a form HUD-50058 or 50059, as applicable, showing an end of participation. The PHA will only approve assistance contingent upon the move-out from the currently occupied assisted unit.

## **Debts Owed to PHAs and Terminations**

All adult household members must sign the form HUD-52675, Debts Owed to Public Housing and Terminations. Prior to admission to the program, the PHA must search for each adult family member in the Debts Owed to PHAs and Terminations module.

If a current or former tenant disputes the information in the module, the tenant should contact the PHA directly in writing to dispute the information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV. Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the program.

### **PHA Policy**

The PHA will require each adult household member to sign the form HUD-52675 once at the eligibility determination. Any new members added to the household after admission will be required to sign the form HUD-52675 prior to being added to the household.

The PHA will search the Debts Owed to PHAs and Terminations module as part of the eligibility determination for new households and as part of the screening process for any household members added after the household is admitted to the program. If any information on debts or terminations is returned by the search, the PHA will determine if this information warrants a denial in accordance with the policies in Part III of this chapter.

## **Income and Income Validation Tool (IVT) Reports**

For each new admission, the PHA is required to review the EIV Income and IVT Reports to confirm and validate family reported income within 120 days of the IMS/PIC submission date of the new admission. The PHA must print and maintain copies of the EIV Income and IVT reports in the tenant file and resolve any discrepancies with the family within 60 days of the EIV Income or IVT report dates.

## **PART III: Denial of Admission**

### ***3-III.A. Overview***

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

In addition, HUD requires or permits HAWC to deny admission based on certain types of current or past behaviors of family members as discussed in this part. HAWC's authority in this area is limited by the Violence against Women Reauthorization Act of 2005 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, or stalking [24 CFR 5.2005].

This part covers the following topics:

- Required denial of admission
- Other permitted reasons for denial of admission
- Screening
- Criteria for deciding to deny admission
- Prohibition against denial of admission to victims of domestic violence, dating violence, or stalking
- Notice of eligibility or denial

### ***3-III.B. Required Denial of Admission***

[24 CFR 960.204]

HAWC is required to establish standards that prohibit admission of an applicant to the public housing program if they have engaged in certain criminal activity or if HAWC 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.

#### **PHA Policy**

Reasonable cause shall be a fact based determination using the criteria set forth in Section 3-III.E and may not rely on the fact of an arrest or conviction standing alone to support HAWC's decision.

Where the statute requires that HAWC prohibit admission for a prescribed period of time after some disqualifying behavior or event, HAWC may choose to continue that prohibition for a longer period of time [24 CFR 960.203(c)(3)(ii)].

HUD requires HAWC to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits but does not require HAWC to admit an otherwise-eligible family if the household member has completed a HAWC-approved

drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

#### PHA Policy

HAWC will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity if HAWC is able to verify that the person who committed the crime is no longer living in the household. If the household member who was evicted has undergone an approved treatment plan, HAWC may allow the household member to be admitted into the program.

- HAWC finds there is reasonable cause to conclude that any household member is currently engaged in the use of illegal drugs. Drug means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. Currently engaged in the illegal use of a drug means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].

#### PHA Policy

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

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

#### PHA Policy

In determining reasonable cause, HAWC will consider all credible evidence, including but not limited to, the underlying facts and circumstances of any record of convictions or evictions of household members related to the use of illegal drugs or the abuse of alcohol. HAWC will also consider evidence from treatment providers or community-based organizations providing services to household members.

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

### ***3-III.C. Restriction on Assistance Based on Assets***

[24 CFR 5.618]

**Section 3-III.C. will be effective for all New Admissions effective on or after the HOTMA compliance date. The HOTMA compliance date will be determined following HUD guidance regarding the timing of the necessary HUD software updates. HAWC will notify all program participants of the HOTMA compliance date once it is determined.**

There are two circumstances under which a family is ineligible for the program based on asset ownership.

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

Second, the family has real property that is suitable for occupancy by the family as a residence and the family has:

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

However, the real property restriction does not apply in the following circumstances:

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

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

- Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
- Is not sufficient for the size of the family;  
[PHA Policy](#)  
The PHA defines *not sufficient for the size of the family* as being overcrowded based on the PHA's occupancy standards in Chapter 5.
- Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner);
- Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
- Is not a property that a family may reside in under the State or local laws of the jurisdiction where the property is located.

### ***3-III.D. Other Permitted Reasons for Denial of Admission***

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

## **Criminal Activity**

[24 CFR 960.203 (b) and (c)]

### **PHA Policy**

#### **A. Criminal History Overview:**

HAWC recognizes the need to create a healthy and safe living environment for its residents by selecting applicants who can consistently meet rental obligations. Screening for criminal history is useful information in helping to make these determinations, but it does not necessarily predetermine an individual's ability to meet rental obligations. In addition, HAWC recognizes that arrest and incarceration rates have risen to unprecedented levels in the last 20 years, and the data demonstrates disproportionately higher rates of incarceration for persons of color and from lower socio-economic backgrounds. HAWC believes that policies which automatically ban persons with a criminal history is a social justice issue, poses a barrier to family reunification and access to affordable housing, and can contribute to systemic homelessness. HAWC actively seeks to reduce barriers so that people can access our housing. HAWC screens for criminal history consistent with federal regulations. We also provide opportunities, such as our secondary review process (see below), for applicants to demonstrate that past criminal behavior is incorrect or is not indicative of their chance for success in housing.

#### **B. Grounds for Denial due to Criminal History per Federal Requirements**

- Individuals convicted of manufacture or production of methamphetamine on the premises of federally assisted housing are denied for life from occupancy in any federally assisted housing; and
- Sex offenders subject to a lifetime registration requirement in any state are denied for life from occupancy in any federally assisted housing.
- Felony theft or crimes related to Identity theft.
- Crimes of violence against another person including domestic violence.

#### **C. Screening for Criminal History in keeping with federal requirements, HAWC will conduct criminal background screening. For applicants not automatically barred by federal law (item B above), the applicant's criminal history will be assessed in the following areas with a three (3) year look back period.:**

- been evicted from federally assisted housing for drug related activity in the last three years;
- been involved in any drug-related or violent criminal activity;
- abused (or had a pattern of abuse) of alcohol;
- has used illegal drugs (or had a pattern of use of illegal substances).

HAWC will evaluate these reports and determine whether any of these activities, alone or together, would adversely affect the health, safety, and welfare of other residents or HAWC employees. Applicants whose tenancies will not adversely affect the health, safety, and welfare of other residents or HAWC employees, and whose housing history indicates a chance for success in housing, will be approved. Applicants whose criminal histories indicate risk to the health, safety and welfare of other residents or HAWC employees will be given the opportunity to provide documentation of mitigating circumstances that may override this conclusion. Once all additional documentation has been received, the applicants file will be given an automatic Secondary Review from the Assistant Director of

the department. In reviewing the application, the Assistant Director will assess the totality of the applicant's circumstances, including any information the applicant has provided, and determine whether the application should be admitted or denied. If the Assistant Director recommends denial of an applicant, he or she will have the right to an informal hearing.

D. Secondary Review- Before taking final action denying an application based on criminal history, HAWC will give the applicant an opportunity to provide information related to their individual circumstances, rehabilitation, or other information that indicates that past criminal behavior is incorrect or is not indicative of the applicant's chance for success in housing. The Assistant Director will review applications referred by the Admissions staff. The Assistant Director will consider the impact of any mitigating circumstances such as the passage of time since offenses last occurred, various attributes of rehabilitation, any superseding positive housing history, and any additional information submitted by the applicant. Depending on the individual situation, the Panel may approve or deny the application, or call for more information before making a final decision. Examples of relevant mitigating circumstances include, but are not limited to:

- The seriousness of the offense;
- The extent of participation by the applicant in the offense;
- The extent to which the applicant has accepted responsibility for their actions;
- Completion of, or ongoing compliance with, sentencing;
- Completion of, or on-going involvement in, rehabilitative programming;
- Involvement in volunteer work, employment, educational activity, training programs, support groups, civic activities or other related activities;
- Changed circumstances since the offense;
- Support from teachers, community corrections officers, social workers, community leaders, volunteer program leaders, medical providers or others;
- Participation in drug court, mental health court or other rehabilitative court; and
- Past success in housing or meeting similar types of obligations.

## **Previous Behavior**

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

HUD authorizes HAWC to deny admission based on relevant information pertaining to the family's previous behavior and suitability for tenancy.

In the event of the receipt of unfavorable information with respect to an applicant, HAWC must consider the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). As discussed in Section 3-III.F, HAWC may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, or stalking.

### **PHA Policy**

HAWC will deny admission to an applicant family if HAWC determines that the family:

- Has a pattern of unsuitable past performance in meeting financial obligations, including rent and utility payments, within the past three years.
- Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past five years which may adversely affect the health, safety, or welfare of other tenants.
- Has a pattern of eviction from housing or termination from residential programs within the past five years (considering relevant circumstances).
- Violated any family obligation during a previous participation in a rental assistance program through HAWC, or any other PHA. HAWC will make an exception if the family member who violated the family obligation is not a current member of the household on the application.
- Has been terminated from any subsidized, or otherwise financially assisted, housing program for violation(s) of family obligations or other program requirements.
- Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- Owes rent or other amounts to this or any other PHA or owner in connection with any assisted housing program. The family must pay any outstanding debt owed HAWC or another PHA as a result of prior participation in any federal housing program within 30 days of HAWC notice to repay. HAWC will not enter into repayment agreements with applicants. Debts must be paid in full prior to admission to the program.
- Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent. HAWC may deny assistance and may refer the family file/record to the proper authorities for appropriate disposition.
- Families who have previously been evicted by owners while renting under a Voucher program (Housing Choice Voucher, Shelter Plus Care, etc.), but who were not terminated from the rental assistance program for a violation of family obligations, will be denied admission for a period of three years from such eviction.
- Was evicted from public housing for any reason during the last three years.
- Is engaging, or has engaged, in or threatened violent or abusive behavior toward HAWC personnel. "Abusive or violent behavior towards HAWC 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, which 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.
- Violated the requirements under the family's Contract of Participation in the Family Self-Sufficiency Program.
- HAWC may admit non-waiting list families if HUD awards funding that is targeted for families living in specified units.

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



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

### ***3-III.E. Screening***

#### **Screening for Eligibility**

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

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

#### **PHA Policy**

HAWC will perform a criminal background and eviction record check for every adult household member. HAWC will utilize local law enforcement and private screening companies to obtain these records.

HAWC will require proof of photo identification, such as a driver's license, school identification, etc. Other means of identification and requests to allow additional time to provide photo identification will be considered.

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

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

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

#### **Obtaining Information from Drug Treatment Facilities**

[24 CFR 960.205]



HUD authorizes HAWC to request and obtain information from drug abuse treatment facilities concerning applicants. Specifically, HAWC 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 HAWC whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use.

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

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

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

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

#### **PHA Policy**

HAWC 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 HAWC 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.

### **Screening for Suitability as a Tenant**

[24 CFR 960.203(c)]

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

#### **PHA Policy**

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

- Payment of rent and utilities
- Caring for a unit and premises
- Respecting the rights of other residents to the peaceful enjoyment of their housing
- Criminal activity that is a threat to the health, safety, or property of others
- Behavior of all household members as related to the grounds for denial as detailed in Sections 3-III. B and C
- Compliance with any other essential conditions of tenancy

## Resources Used to Check Applicant Suitability

[PH Occ GB, pp. 47-56]

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

### PHA Policy

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

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

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

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

If an applicant has no rental payment history HAWC will check court records of eviction actions and other financial judgments, and credit reports. A lack of credit history will not disqualify someone from becoming a public housing resident, but a poor credit rating may. Applicants with no rental payment history will also be asked to provide HAWC with personal references. The references will be requested to complete a verification of the applicant's ability to pay rent if no other documentation of ability to meet financial obligations is available. The applicant will also be required to complete a checklist documenting their ability to meet financial obligations.

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

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

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

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

A personal reference will be requested to complete a verification of the applicant's ability to care for the unit and avoid disturbing neighbors if no other documentation is available. In

these cases, the applicant will also be required to complete a checklist documenting their ability to care for the unit and to avoid disturbing neighbors. Home visits may be used to determine the applicant's ability to care for the unit.

### ***3-III.F. Criteria for Deciding to Deny Admission***

#### **Evidence**

##### **PHA Policy**

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

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

##### **PHA Policy**

HAWC will consider the following factors prior to making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents
- The effects that denial of admission may have on other members of the family who were not involved in the action or failure
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.F) a victim of domestic violence, dating violence, or stalking.
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future
- Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs
- In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol

rehabilitation program or has otherwise been rehabilitated successfully. HAWC 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. HAWC may request information from the rehabilitation program in accordance with section 3-III.D of this plan.

### **Removal of a Family Member's Name from the Application**

[24 CFR 960.203(c)(3)(i)]

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

#### **PHA Policy**

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

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

### **Reasonable Accommodation**

[PH Occ GB, pp. 58-60]

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

#### **PHA Policy**

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

### ***3-III.G. Prohibition against Denial Of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking***

The Violence against Women Act (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying admission to an otherwise qualified applicant on the basis or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

## **Definitions**

[24 CFR 5.2003]

### **As used in VAWA:**

The term **bifurcate** means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

The term **domestic violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

The term **dating violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

The term **stalking** means:

- To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
- To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
- In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

The term **immediate family member** means, with respect to a person –

- A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
- Any other person living in the household of that person and related to that person by blood and marriage.

## **Notification**

VAWA requires PHAs to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification form (HUD-5382) at the time the applicant is denied.

### **PHA Policy**

The PHA acknowledges that a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under the PHA's policies.

While the PHA is not required to identify whether adverse factors that resulted in the applicant's denial are a result of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the applicant may inform the PHA that their status as a victim is directly related to the grounds for the denial. The PHA will request that the applicant provide enough information to the PHA to allow the PHA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

The PHA will include in its notice of denial information about the protection against denial provided by VAWA in accordance with section 16-VII.C of this ACOP, a notice of VAWA rights, and a copy of the form HUD-5382. The PHA will request in writing that an applicant wishing to claim this protection notify the PHA within 14 business days.

## **Documentation**

### **Victim Documentation**

#### **PHA Policy**

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, 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, or stalking
- A police or court record documenting the domestic violence, dating violence, or stalking
- Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical 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**

### **PHA Policy**

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

- A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the public housing unit
- Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

## **Time Frame for Submitting Documentation**

### **PHA Policy**

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, HAWC will grant an extension of 10 business days and will postpone scheduling the applicant's informal hearing until after it has received the documentation or the extension period has elapsed. If, after reviewing the documentation provided by the applicant, HAWC determines that the family is eligible for assistance, no informal hearing will be scheduled, and HAWC will proceed with admission of the applicant family.

## ***HAWC Confidentiality Requirements***

[24 CFR 5.2007(a)(1)(5)]

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

### **PHA Policy**

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, HAWC will inform the victim before disclosure occurs so that safety risks can be identified and addressed.



### **3-III.G. Notice of Eligibility or Denial**

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

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

#### **PHA Policy**

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

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

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

### **Exhibit(s)**

#### ***EXHIBIT 3-1: Detailed Definitions Related to Disabilities***

##### **Person with Disabilities**

[24 CFR 5.403]

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

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:
- Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months
- In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or



ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

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

(A) IN GENERAL – The term developmental disability means a severe, chronic disability of an individual that-

(i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) is manifested before the individual attains age 22;

(iii) is likely to continue indefinitely;

(iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) self-care, (II) receptive and expressive language, (III) learning, (IV) mobility, (V) self-direction, (VI) capacity for independent living, (VII) economic self-sufficiency; and

(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

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

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

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

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

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

### **Individual with Handicaps**

[24 CFR 8.3]

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from

participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

As used in this definition:

“Physical or mental impairment” includes:

- 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
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

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

“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.

“Is regarded as having an impairment” means:

- 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
- 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
- Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment

## **Chapter 4: Applications, Waiting List and Tenant Selection**

### **Introduction**

When a family wishes to reside in public housing, the family must submit an application that provides HAWC with the information needed to determine the family's eligibility. HUD requires HAWC to place all eligible families that apply for public housing on a waiting list. When a unit becomes available, HAWC must select families from the waiting list in accordance with HUD requirements and HAWC policies as stated in its Admissions and Continued Occupancy Policy (ACOP) and its annual plan.

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

HUD regulations require that HAWC comply with all equal opportunity requirements and it must affirmatively further fair housing goals in the administration of the program [24 CFR 960.103, PH Occ GB p. 13]. Adherence to the selection policies described in this chapter ensures that HAWC will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and HAWC policies for taking applications, managing the waiting list and selecting families from the waiting list. HAWC's policies for assigning unit size and making unit offers are contained in Chapter 5. Together, Chapters 4 and 5 of the ACOP comprise the HAWC's Tenant Selection and Assignment Plan (TSAP).

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

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

**Part II: Managing the Waiting List.** This part presents the policies that govern how the HAWC'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 HAWC will use to keep the waiting list current.

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

### **PART I: The Application Process**

#### ***4-1.A. Overview***

This part describes the policies that guide HAWC's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the

family on the waiting list. This part also describes HAWC's obligation to ensure the accessibility of the application process.

#### ***4-I.B. Applying for Assistance***

Any family that wishes to reside in public housing must apply for admission to the program [24 CFR 1.4(b)(2)(ii), 24 CFR 960.202(a)(2)(iv), and PH Occ GB, p. 68]. HUD permits HAWC to determine the format and content of its applications, as well how such applications will be made available to interested families and how applications will be accepted by HAWC. However, HAWC must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of HAWC's application [Notice PIH 2009-36].

##### **PHA Policy**

For the Public Housing waiting list, HAWC will use a two-step application process. HAWC initially will require families to provide only the information needed to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list.

When the waiting list is open, application forms will be available in electronic (online) and paper version. The applications will include Form HUD-92006, Supplement to Application for Federally Assisted Housing.

Paper applications may be obtained from HAWC's office during normal business hours or by mail upon request. HAWC will also make paper applications available to community social service agencies while the waiting list is open to ensure wide distribution. The electronic version of the application will be available online, linked from HAWC's website. The direct URL of the application, if available, will also be advertised.

Completed paper applications must be returned to HAWC by mail or in person during normal business hours. Electronic applications must be completed online by the deadline determined and advertised by HAWC. Special advocacy groups and community social service agencies may submit applications on behalf of their clients using the standard completion and submission methods available to the community at large.

Applications must be complete in order to be accepted by HAWC for processing. The electronic application will utilize an error checking process that will reject incomplete applications and notify applicants of missing information. The paper application will include instructions notifying applicants that incomplete applications cannot be processed.

HAWC will retain one application per family.

#### ***4-I.C. Accessibility of the Application Process***

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

## **Disabled Populations**

[24 CFR 8; PH Occ GB, p. 68]

HAWC must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or HAWC must provide an alternate approach that provides equal access to the application process. Chapter 2 provides a full discussion of HAWC's policies related to providing reasonable accommodations for people with disabilities.

## **Limited English Proficiency**

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

### ***4-I.D. Placement on the Waiting List***

HAWC must review each completed application received and make a preliminary assessment of the family's eligibility. HAWC must place on the waiting list families for whom the list is open unless HAWC determines the family to be ineligible. Where the family is determined to be ineligible, HAWC must notify the family in writing [24 CFR 960.208(a); PH Occ GB, p. 41]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

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

#### **PHA Policy**

HAWC will not conduct a preliminary assessment of the family's eligibility at the time of initial application. The family's application will be entered into HAWC's computer system. HAWC will randomly order all applications after the application deadline has passed, then select an adequate number of applications to maintain full utilization of available Public Housing Units for a period of two years to be placed on the waiting list. HAWC will place the selected applications on the waiting list in order of the assigned numbers and according to HAWC preferences, and will notify applicants of the results of random selection.

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.

## **PART II: Managing the Waiting List**

### ***4-II.A. Overview***

HAWC must have policies regarding the type of waiting list it will utilize as well as the various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings

and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for public housing, and conducting outreach to ensure a sufficient number of applicants.

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

#### ***4-II.B. Organization of the Waiting List***

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

##### **PHA Policy**

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

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

HAWC may adopt one community-wide waiting list or site-based waiting lists. HAWC must obtain approval from HUD through submission of its Annual Plan before it may offer site-based waiting lists. Site-based waiting lists allow families to select the development where they wish to reside and must be consistent with all applicable civil rights and fair housing laws and regulations [24 CFR 903.7(b)(2)].

##### **PHA Policy**

HAWC will maintain one single community-wide waiting list for its developments. Within the list, HAWC will designate subparts to easily identify who should be offered the next available unit (i.e. mixed populations, general occupancy, unit size, and accessible units).

HAWC will not adopt site-based waiting lists.

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

HUD permits, but does not require, that PHAs maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs [24 CFR 982.205(a)(1)].

##### **PHA Policy**

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

## ***4-II.C. Opening and Closing the Waiting List***

### **Closing the Waiting List**

HAWC is permitted to close the waiting list, in whole or in part, if it has an adequate pool of families to fill its developments. HAWC may close the waiting list completely, or restrict intake by preference, type of project, or by size and type of dwelling unit. [PH Occ GB, p. 31].

#### **PHA Policy**

The PHA will open the waiting list for a number of consecutive days. The PHA will announce the opening and closing date in its notice.

Where HAWC has particular preferences or funding criteria that require a specific category of family, the PHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

### **Reopening the Waiting List**

If the waiting list has been closed, it may be reopened at any time. HAWC should publish a notice in local newspapers of general circulation, minority media, and other suitable media outlets that HAWC is reopening the waiting list. Such notice must comply with HUD fair housing requirements. HAWC should specify who may apply, and where and when applications will be received.

#### **PHA Policy**

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

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

- The Oregonian
- The Hillsboro Argus
- The Skanner
- El Hispanic News
- Asian Reporter
- HAWC website

## ***4-II.D. Family Outreach***

[24 CFR 903.2(d); 24 CFR 903.7(a) and (b)]

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

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

HAWC 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

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

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

#### **PHA Policy**

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

### ***4-II.E. Reporting Changes in Family Circumstances***

#### **PHA Policy**

While the family is on the waiting list, the family must inform the PHA, within 10 business days, of changes in family size or composition, preference status, or contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.

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



#### **4-II.F. Updating the Waiting List**

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

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

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

##### **PHA Policy**

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

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

Any mailings to the applicant which require a response will provide a timeline of at least ten (10) business days for a response and will state that failure to respond within the specified timeline will result in the applicant's name being removed from the waiting list without further notice.

An extension of ~~up to~~ no less than ten (10) additional business days to respond may be granted if requested and needed as a reasonable accommodation for a person with a disability.

If the notice is returned by the post office without a forwarding address, the applicant will be removed from all the waiting lists without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 10 business days to respond from the date the letter was re-sent. If it is discovered that HAWC incorrectly addressed the notice, the applicant will be reinstated on the waiting list at the original date and time of application.

If an applicant is removed from the waiting list for failure to respond, they will not be entitled to reinstatement unless HAWC determines there were circumstances beyond the person's control.

HAWC does not accept responsibility for mail delays or lost mail. Mail not returned to HAWC by the Post Office is assumed to have been delivered to the address supplied by the applicant. If the applicant claims that the mailing was not received, but the address used by HAWC is correct, the applicant must then re-apply to the waiting list.

When a family is removed from the waiting list during the update process for failure to respond, no informal hearing will be offered. Such failures to act on the part of the applicant prevent HAWC from making an eligibility determination; therefore no informal hearing is required.

If a family is removed from the waiting list for failure to respond, the Executive Director may reinstate the family if s/he determines the lack of response was due to HAWC error, or to circumstances beyond the family's control.

## **Removal from the Waiting List**

### **PHA Policy**

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

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

If a family is removed from the waiting list because HAWC has determined the family is not eligible for admission, a notice will be sent to the family's address of record. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal hearing regarding the HAWC's decision (see Chapter 14) [24 CFR 960.208(a)].

## **PART III: Tenant Selection**

### ***4-III.A. Overview***

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

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

HAWC must maintain a clear record of all information required to verify that the family is selected from the waiting list according to HAWC's selection policies [24 CFR 960.206(e)(2)]. HAWC's policies must be posted any place where HAWC receives applications. HAWC must provide a copy of its tenant selection policies upon request to any applicant or tenant. HAWC may charge the family for providing a copy of its tenant selection policies [24 CFR 960.202(c)(2)].

#### **PHA Policy**

When an applicant or resident family requests a copy of HAWC's tenant selection policies, HAWC will direct them to the website version. Paper copies will be provided at a cost of \$0.25 per page.

### **4-III.B. Selection Method**

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

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

HAWC is permitted to establish local preferences and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits HAWC to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA plan and the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources [24 CFR 960.206(a)].

#### **PHA Policy**

Local preferences used by HAWC include:

##### **Homeless**

A homeless applicant is defined as one of the following:

- An individual or household who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - Has a primary residence that is a public or private place not meant for human habitation including a car, park, abandoned building, bus or train station, airport, or camping ground;
  - Is living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels/motels paid for by charitable organizations or by federal, state and/or local government programs); or
  - Is exiting an institution where he/she has 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.
  - Was formerly homeless and is now receiving short-term rapid re-housing rental assistance through a program funded by the Emergency Solutions Grant (ESG) or Supportive Services to Veterans and Families (SSVF).

OR

- 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; and
  - Has no other residence; and
  - Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain permanent housing.

#### **Verification of Homeless Preference**

HAWC will accept either of the following forms of verification that an applicant is homeless:

- A signed letter that specifically states the individual or household is homeless under the definition above, including the date, on letterhead, from:
  - A public safety agency (i.e. local police department); or
  - A social service agency; or
  - The shelter where the applicant family is currently staying
  - HAWC's verification form, completed by an appropriate agent (if applicable).

#### **Victim of Domestic Violence**

"Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

To qualify for this preference:

- HAWC shall determine that the domestic violence occurred within the last 12 months, is of a continuing nature, or poses a continuing threat to the applicant; and
- The applicant shall certify that the person who engaged in such violence will not reside with the applicant family unless the HAWC has given advance written approval. If the family is admitted, HAWC may deny or terminate assistance to the family for breach of this certification.

#### **Verification of Victim of Domestic Violence Preference**

HAWC will accept the following forms of verification of displacement by domestic violence:

- A Federal, State, tribal, territorial, or local police or court record; or
- Documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney or a medical professional, from whom the victim has sought assistance in addressing domestic violence, or the effects of abuse, in which the professional attests to the professional's belief that the incident or incidents in

question are bona fide incidents of abuse, and the victim of domestic violence has signed or attested to the documentation.

### **Elderly/Disabled on a Fixed Income or No Income**

To qualify as Elderly or Disabled on a Fixed Income or No Income, the head of the household or spouse must be at least 62 years of age or a person with disabilities, and at least 75% of the household income must come from fixed sources, or the household must have no source of cash income (not including non-cash benefits such as food stamps).

A "fixed income" is defined as income of a specified and consistent value that is received at specified and consistent intervals. Types of fixed income include Social Security benefits, VA benefits, pension income, or permanent disability benefits. Other types of fixed income sources may be considered by HAWC on a case-by-case basis.

### **Verification of Elderly or Disabled on a Fixed Income or No Income Preference Elderly Status**

Elderly status will be verified by the age of the person as shown on photo identification provided by the applicant family.

### **Disabled Status**

Disability status will be verified by one of the following:

- Receipt of Social Security Disability Income (SSDI), Supplemental Security Income (SSI) due to a disability; or
- If not receiving income from Social Security due to a disability, HAWC's disability verification form, completed and signed by a medical professional of the applicant's choosing.

### **Verification of Fixed Income or No Income**

The applicant's income will be considered "fixed" if at least 75% of it is from one or more of the following sources:

- Social Security benefits
- Veteran's Administration benefits
- Permanent disability benefits from a non-government source

If the applicant household claims to have no source of cash income, all adult members of the household must complete a Declaration of Zero Income. Additionally, HAWC will verify zero income status by checking any available databases or resources for verification of income (such as the State of Oregon Department of Human Services).

### **Types of Applicants with Preference over "Other Singles"**

Elderly, disabled and displaced families with up to two members will be given a selection priority over all "other single" applicants regardless of Preference status.

"Other Single(s)" denotes a one-person household in which the individual member is neither elderly, nor disabled, nor displaced by government action. Such applicants will be placed on the waiting list in accordance with their date and time of applications, but cannot be selected for assistance before any elderly family, disabled family, or displaced single regardless of any preferences.

## **Income Targeting Requirement**

[24 CFR 960.202(b)]

HUD requires that extremely low-income (ELI) families make up at least 40% of the families admitted to public housing during HAWC's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, HAWC may skip non-ELI families on the waiting list in order to select an ELI family.

HAWC also operates a housing choice voucher (HCV) program, admissions of extremely low-income families to HAWC's HCV program during HAWC's fiscal year that exceed the 75% minimum target requirement for the voucher program, shall be credited against HAWC's basic targeting requirement in the public housing program for the same fiscal year. However, under these circumstances the fiscal year credit to the public housing program must not exceed the lower of: (1) ten percent of public housing waiting list admissions during HAWC's fiscal year; (2) ten percent of waiting list admissions to HAWC's housing choice voucher program during HAWC's fiscal year; or (3) the number of qualifying low-income families who commence occupancy during the fiscal year of HAWC's public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

### **PHA Policy**

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

## **Mixed Population Developments**

[24 CFR 960.407]

A mixed population development is a public housing development or portion of a development that was reserved for elderly families and disabled families at its inception (and has retained that character) or HAWC at some point after its inception obtained HUD approval to give preference in tenant selection for all units in the development (or portion of a development) to elderly and disabled families [24 CFR 960.102]. Elderly family means a family whose head, spouse, co-head, or sole member is a person who is at least 62 years of age. Disabled family means a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403]. HAWC must give elderly and disabled families equal preference in selecting these families for admission to mixed population developments. HAWC may not establish a limit on the number of elderly or disabled families that may occupy a mixed population development. In selecting elderly and disabled families to fill these units, HAWC must first offer the units that have accessibility features for families that include a person with a disability and require the accessibility features of such units. HAWC may not discriminate against elderly or disabled families that include children (Fair Housing Amendments Act of 1988).

## ***Units Designated for Elderly or Disabled Families***

[24 CFR 945]

HAWC may designate projects or portions of a public housing project specifically for elderly or disabled families. HAWC must have a HUD-approved allocation plan before the designation may take place.

Among the designated developments, HAWC must also apply any preferences that it has established. If there are not enough elderly families to occupy the units in a designated elderly development, HAWC may allow near-elderly families to occupy the units [24 CFR 945.303(c)(1)]. Near-elderly family means a family whose head, spouse, or co-head is at least 50 years old, but is less than 62 [24 CFR 5.403].

If there are an insufficient number of elderly families and near-elderly families for the units in a development designated for elderly families, HAWC must make available to all other families any unit that is ready for re-rental and has been vacant for more than 60 consecutive days [24 CFR 945.303(c)(2)].

The decision of any disabled family or elderly family not to occupy or accept occupancy in designated housing shall not have an adverse effect on their admission or continued occupancy in public housing or their position on or placement on the waiting list. However, this protection does not apply to any family who refuses to occupy or accept occupancy in designated housing because of the race, color, religion, sex, disability, familial status, or national origin of the occupants of the designated housing or the surrounding area [24 CFR 945.303(d)(1) and (2)].

This protection does apply to an elderly family or disabled family that declines to accept occupancy, respectively, in a designated project for elderly families or for disabled families, and requests occupancy in a general occupancy project or in a mixed population project [24 CFR 945.303(d)(3)].

#### **PHA Policy**

HAWC does not have designated elderly or designated disabled housing at this time.

### **Deconcentration of Poverty and Income-Mixing**

[24 CFR 903.1 and 903.2]

HAWC's admission policy 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 HAWC's deconcentration policies must be included in its annual plan [24 CFR 903.7(b)].

HAWC's deconcentration policy 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. The following developments are not subject to deconcentration and income mixing requirements: developments operated by HAWC with fewer than 100 public housing units; mixed population or developments designated specifically for elderly or disabled families; developments operated by HAWC with only one general occupancy development; developments approved for demolition or for conversion to



tenant-based public housing; and developments approved for a mixed-finance plan using HOPE VI or public housing funds [24 CFR 903.2(b)].

### **Steps for Implementation**

[24 CFR 903.2(c)(1)]

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

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

#### **PHA Policy**

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

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

#### **PHA Policy**

HAWC will determine the average income of all families residing in each covered development (not adjusting for unit size) on an annual basis.

3. HAWC must then determine whether each of its covered developments falls above, within, or below the established income range (EIR), which is from 85% to 115% of the average family income determined in Step 1. However, the upper limit must never be less than the income at which a family would be defined as an extremely low income family (30% of median income).
4. HAWC with covered developments having average incomes outside the EIR must then determine whether or not these developments are consistent with its local goals and annual plan.
5. Where the income profile for a covered development is not explained or justified in the annual plan submission, HAWC must include in its admission policy its specific policy to provide for deconcentration of poverty and income mixing.

Depending on local circumstances HAWC's deconcentration policy may include, but is not limited to the following:

- Providing incentives to encourage families to accept units in developments where their income level is needed, including rent incentives, affirmative marketing plans, or added amenities
- Targeting investment and capital improvements toward developments with an average income below the EIR to encourage families with incomes above the EIR to accept units in those developments



- Establishing a preference for admission of working families in developments below the EIR
- Skipping a family on the waiting list to reach another family in an effort to further the goals of deconcentration
- Providing other strategies permitted by statute and determined by HAWC in consultation with the residents and the community through the annual plan process to be responsive to local needs and HAWC's strategic objectives

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

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

#### PHA Policy

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

- Skipping a family on the waiting list to reach another family in an effort to further the goals of the HAWC's deconcentration policy:
- If a unit becomes available at a development below the EIR, the first eligible family on the waiting list [or transfer 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 [or transfer 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 [or transfer 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 first eligible family on the waiting list [or transfer list] in preference order regardless of income.
- If a unit becomes available at a development above the EIR, the first eligible family on the waiting list [or transfer 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 [or transfer 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 [or transfer 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 first eligible family on the waiting list [or transfer list] in preference order regardless of income.
- Skipping of families for deconcentration purposes will be applied uniformly to all families.

- A family has the sole discretion whether to accept an offer of a unit made under HAWC's deconcentration policy. HAWC shall not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under HAWC's deconcentration policy. However, HAWC shall uniformly limit the number of offers received by applicants [and transfer families], described in this Chapter.

## **Order of Selection**

[24 CFR 960.206(e)]

HAWC system of preferences may select families either according to the date and time of application or by a random selection process.

### **PHA Policy**

Applicants will be selected for screening in the following order:

- 1) Families claiming a local preference in numerical order based on the numbers that were assigned to each application, by lottery, at the time the applications were placed on the waiting list.
- 2) Families that do not claim a preference in numerical order based on the numbers that were assigned to each application, by lottery, at the time the applications were placed on the waiting list.
- 3) Families will be selected from the waiting list, on a first-come, first-served basis according to the date and time their complete application is received by HAWC.
- 4) When selecting applicants from the waiting list HAWC will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. HAWC will offer the unit to the highest ranking applicant who qualifies for that unit size or type, or that requires the accessibility features.
- 5) By matching unit and family characteristics, it is possible that families who are lower on the waiting list may receive an offer of housing ahead of families with an earlier date and time of application or higher preference status.
- 6) Factors such as deconcentration or income mixing and income targeting will also be considered in accordance with HUD requirements and PHA Policy

### **Verification of Preferences**

HAWC will accept verification of preferences as described in this chapter only from third party sources generally regarded to be knowledgeable professionals.

HAWC reserves the right to determine whether or not the person providing the verification meets the definition of "knowledgeable professional" in the context of the preference being verified.

### **Treatment of Single Applicants**

Applicants who are elderly, disabled, or displaced families of no more than two persons will be given a selection priority over all "Other Single" applicants regardless of preference status.

"Other Singles" denotes one-person households in which the individual member is not elderly, disabled, or displaced by government action. Such applicants will be placed on the waiting list in accordance with any other preferences to which they are entitled, but they cannot be selected for assistance before any one-person elderly, disabled or displaced family regardless of selection preferences.

### ***4-III.C. Notification of Selection***

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

#### **PHA Policy**

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

- The notice will inform the family of the following:
- Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview
- Who is required to attend the interview
- Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation
- Documents that must be provided at the interview to document eligibility for a preference, if applicable
- Other documents and information that should be brought to the interview

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

### ***4-III.D. The Application Interview***

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

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if HAWC determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by HAWC [Notice PIH 2010-3].

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

### PHA Policy

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

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

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

Pending disclosure and documentation of social security numbers, HAWC will allow the family to retain its place on the waiting list for 30 days. If not all household members have disclosed their SSNs at the next time a unit becomes available, HAWC will offer a unit to the next eligible applicant family on the waiting list.

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

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

An advocate, interpreter, or other assistant may assist the family with the application and interview process. For Limited English Proficient (LEP) applicants, HAWC will provide translations services in accordance with HAWC's LEP plan.

If the family is unable to attend a scheduled interview, the family should contact HAWC in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, HAWC will send a file inactive notification letter giving the family 30 days to respond and schedule a new appointment. If the family fails to respond, they are automatically filed inactive per the notification.

### ***4-III.E. Final Eligibility Determination***

[24 CFR 960.208]

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

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

#### **PHA Policy**

HAWC will notify a family in writing of their eligibility within 10 business days of the determination and will provide the approximate date of occupancy insofar as that date can be reasonably determined.

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

#### **PHA Policy**

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

If HAWC 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 HAWC can move to deny the application. See Section 3-III.G for HAWC's policy regarding such circumstances.

Upon making an eligibility determination, HAWC must provide the family a notice of VAWA rights as well as the HUD VAWA self-certification form (Form HUD-5382) in accordance with the Violence against Women Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of eligibility determination. This notice will be provided in both of the following instances: (1) when a family is notified of its eligibility; or (2) when a family is notified of its ineligibility.

## **Chapter 5: Occupancy Standards and Unit Offers**

### **Introduction**

HAWC 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. HAWC's waiting list and selection policies are contained in Chapter 4. Together, Chapters 4 and 5 of the ACOP comprise HAWC's Tenant Selection and Assignment Plan (TSAP).

Policies in this chapter are organized in two parts.

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

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

### **PART I: Occupancy Standards**

#### ***5-1.A. Overview***

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

#### ***5-1.B. Determining Unit Size***

In selecting a family to occupy a particular unit, HAWC 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. HAWC is permitted to develop appropriate occupancy standards as long as the standards do not have the effect of discriminating against families with children [PH Occ GB, p. 62].

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

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

#### **PHA Policy**

The occupancy standard is used for the purpose of eligibility at program admission, and to determine household eligibility for unit transfers based on changes in household composition. Unit transfer requests will be reviewed in accordance with the policies described in Chapter 12.

HAWC will use the same occupancy standards for each of its Public Housing developments.

HAWC's occupancy standards are as follows:

HAWC will allocate one bedroom for each two persons within the household, except in the following circumstances:

- Persons of different generations, persons of same generations but 18 years or more apart in age, persons of the opposite sex, and unrelated adults should be allocated a separate bedroom; For purposes of this definition, a generation is all the family members born of one or more similar parents.
- Spouses or domestic partners shall be assigned one bedroom.
- Children of opposite sex shall be assigned one bedroom until one of the children reaches age six (6) ;
- Foster children will be included in determining unit size only if they will be living in the unit for more than 6 months;
- A Live-in aide or aides (approved by HAWC to reside in unit) will be allocated an additional bedroom. No additional bedrooms are allocated for the aide's family;
- A bedroom shall not be assigned for a family member, other than a spouse, who is determined by HAWC to be "permanently absent";
- A single pregnant woman with no other family members must be treated as a two-person family; Unborn children will not be included in the size of the household, except in the case of a single pregnant woman; however, a single pregnant woman will be assigned a one (1) bedroom unit;
- Single person families shall be allocated one bedroom.

HAWC 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
0	1	2
1	1	3
2	2	5
3	3	7
4	4	9



## ***5-I.C. Exceptions to Occupancy Standards***

### **Types of Exceptions**

#### **PHA Policy**

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

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

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

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

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

### **Processing of Exceptions**

#### **PHA Policy**

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

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

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

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



## **PART II: Unit Offers**

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

### ***5-II.A. Overview***

HAWC 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, HAWC must offer the dwelling unit to an applicant in the appropriate sequence. HAWC will offer the unit until it is accepted. This section describes HAWC'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 HAWC's policies for offering units with accessibility features.

#### **PHA Policy**

HAWC 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***

#### **PHA Policy**

Under this plan the first qualified applicant in sequence on the waiting list will be made one offer of a unit of the appropriate size.

The applicant will be offered a suitable unit in the available location. If the offer is rejected, the applicant will be removed from the Public Housing waiting list.

HAWC 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.

If more than one unit of the appropriate type and size is available, the first unit to be offered will be the first unit that is ready for occupancy.

### ***5-II.C. Time Limit for Unit Offer Acceptance or Refusal***

#### **PHA Policy**

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

Offers made by telephone will be confirmed by letter.

## **5-II.D. Refusals of Unit Offers**

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)].

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

#### **PHA Policy**

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

- Inaccessibility to source of employment, education, or job training, children's day care, or educational program for children with disabilities, so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities
- The family demonstrates to HAWC's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption
- A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member
- The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move
- The unit has lead-based paint and the family includes children under the age of six
- In the case of a unit refusal for good cause the applicant will not be removed from the waiting list as described later in this section. The applicant will remain at the top of the waiting list until the family receives an offer for which they do not have good cause to refuse.

HAWC will require documentation of good cause for unit refusals.

### **Unit Refusal without Good Cause**

### PHA Policy

If a household refuses two unit offers, the household will be removed from the public housing waiting list. Unit refusals due to accessibility needs protected under the ADA or due to a VAWA protected circumstance will not be counted towards the two-offer limit. HAWC will send notice to the family of waiting list removal. The notice will inform the family of their right to request an informal hearing and the process for doing so (see Chapter 14).

## **5-II.E. Accessible Units**

[24 CFR 8.27]

HAWC 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 HAWC must offer such units:

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

### PHA Policy

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

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

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

***5-II.F. Designated Housing***

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

Proposed

Proposed

# Chapter 6A: Income and Rent Determinations Effective Prior to the HOTMA Compliance Date

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

## **Introduction**

This chapter describes the approach to determination of income and rent prior to the implementation of the Housing Opportunity through Modernization Act (HOTMA). Determinations effective on or after the HOTMA compliance date will be conducted in accordance with Chapter 6B. The HOTMA compliance date will be determined following HUD guidance regarding the timing of the necessary HUD software updates. HAWC will notify all program participants of the HOTMA compliance date once it is determined.

A family's income determines eligibility for assistance and is also used to calculate the family's rent payment. HAWC 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 HAWC policies related to these topics in three parts as follows:

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

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

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

## **PART I: Annual Income**

### ***6A-I.A. Overview***

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

5.609 Annual income.

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

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

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

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this ACOP, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-I.D). Verification requirements for annual income are discussed in Chapter 7.

### **6A-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.

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

#### **PHA Policy**

A member of the household will be considered “temporarily absent” if they will be out of the household no more than three (3) consecutive months, or 120 non-consecutive days, during any 12-month period.

A member of the household will be considered “permanently absent” if they will be out of the household more than three (3) consecutive months, or 120 non-consecutive days, during any 12-month period.

If the entire household will be absent from the unit for more than two (2) weeks, the household must request prior written permission from the PHA. Consent will not be granted to hold the unit for more than three (3) consecutive months if the entire family is absent.

### **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 HAWC indicating that the student has established a separate household, or the family declares that the student has established a separate household. Such information will include, but not be limited to:

- Photo identification or driver's license with an address that differs from the household; or
- Enrollment paperwork reflecting a different address.

### **Absences Due to Placement in Foster Care**

[24 CFR 5.403]

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

If a child has been placed in foster care, HAWC will verify with the appropriate agency whether and when the child is expected to be returned to the home.

Generally, If the agency verifies that the child(ren) is expected to return to the home in no more than six months, the child(ren) will be considered members of the household. If the agency verifies that it reasonably believes the child(ren) will be placed in foster care for more than six months, the child(ren) will be considered permanently absent from the household.

If the agency indicates that a condition of the child(ren) returning to the household is the provision of proper sleeping space for the child(ren), HAWC may consider the children as part of the household for the purpose of determining unit bedroom size; however, if the child(ren) is not returned within 180 days, HAWC may reduce the unit bedroom size of the household.

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

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

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

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted in the total household income.



HAWC will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co-head qualifies as an elderly person or a person with disabilities.

### **Absences Due to Incarceration**

A sole member of the household incarcerated for more than 90 days will be considered permanently absent.

Any member of the household other than the sole member may be considered permanently absent if incarcerated for 3 consecutive months or more.

Household members absent due to incarceration may not be eligible for rental assistance upon release from custody, dependent upon the nature of the criminal activity that resulted in the incarceration. Refer to Chapter 12 for HAWC's policies regarding criminal activity and termination of assistance.

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

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

### **Joint Custody of Children**

#### **PHA Policy**

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family 51 percent or more of the time. "51 percent of the time" is defined as 183 days of the year, which do not have to run consecutively.

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, HAWC will make the determination based on available documents such as court orders, school enrollment, or an IRS return showing which family has claimed the child for income tax purposes.

## Caretakers for a Child

### PHA Policy

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

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

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

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

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

## ***6A-I.C. Anticipating Annual Income***

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

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

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

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

HAWC is 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 HAWC to use pay-stubs to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where HAWC does not determine it is necessary to obtain additional third-party data.

#### PHA Policy

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

HAWC will obtain written and/or oral third-party verification in accordance with the verification requirements and policy in Chapter 7 in the following cases:

- If EIV or other UIV data is not available,
- If the family disputes the accuracy of the EIV employer data, and/or
- HAWC determines additional information is needed.

In such cases, HAWC 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 HAWC annualized projected income.

When HAWC cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), HAWC 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 HAWC to show why the historic pattern does not represent the family's anticipated income.

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

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

Example: An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the reexamination. In such a case HAWC would calculate annual income as follows:  $(\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the HAWC 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 HAWC's policy on reexaminations does not require interim reexaminations for other types of changes.

When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the reexamination interview date.

EIV quarterly wages will not be used to project annual income at an annual or interim reexamination.

## **Projecting Income**

In HUD's EIV webcast of January 2008, HUD made clear that HAWC is not to use EIV quarterly wages to project annual income.

## **6A-I.D. Earned Income**

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

#### **Wages and Related Compensation**

[24 CFR 5.609(b)(1)]

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

#### **PHA Policy**

For persons who regularly receive bonuses or commissions, HAWC will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, HAWC will use the prior year amounts. In either case the family may provide, and HAWC 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, HAWC will count only the amount estimated by the employer. The file will be documented appropriately.

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

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

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

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

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

#### **PHA Policy**

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

### **Children's Earnings**

[24 CFR 5.609(c)(1)]

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

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

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

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

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

### **Income Earned under Certain Federal Programs**

[24 CFR 5.609(c)(17)]

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

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

### **Resident Service Stipend**

[24 CFR 5.600(c)(8)(iv)]

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for HAWC, 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 HAWC's governing board. No resident may receive more than one such stipend during the same period of time.

### **State and Local Employment Training Programs**

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

#### **PHA Policy**

HAWC defines training program as "a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period of time. It is designed to lead to a higher level of proficiency, and it enhances the individual's ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education" [expired Notice PIH 98-2, p. 3].

HAWC defines incremental earnings and benefits as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3-4].

In calculating the incremental difference, HAWC 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 HAWC's interim reporting requirements (see chapter on reexaminations).

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

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

#### **PHA Policy**

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

### *Earned Income Tax Credit.*

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

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

## **6A-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. The full text of 24 CFR 960.255 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below. The EID is available only to families that are eligible for and participating on the program as of December 31, 2023, or before; no new families may be added on or after January 1, 2024.

### ***Eligibility***

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

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

### ***Calculation of the Disallowance***

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

### PHA Policy

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

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

### *Initial 12-Month Exclusion*

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. As of May 9, 2016, the initial 12 months of the exclusion period are consecutive, and immediately followed by the second 12-month period.

### PHA Policy

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

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

During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. As of May 9, 2016, the 12 months are consecutive.

### *Lifetime Limitation*

As of May 9, 2016, there is a 24-month period lifetime limitation on the EID exclusion benefit. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section assistance, or if there are breaks in assistance.

### *Individual Savings Accounts*

[24 CFR 960.255(d)]

### PHA Policy

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

Rules pertaining to ISAs do not apply to this public housing program.

## **6A-I.F. Business Income**

[24 CFR 5.609(b)(2)]



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

## **Business Expenses**

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

### **PHA Policy**

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

### **PHA Policy**

Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

## **Capital Indebtedness**

HUD regulations do not permit HAWC to deduct from gross income the amortization of capital indebtedness.

### **PHA Policy**

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

## **Negative Business Income**

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

## **Withdrawal of Cash or Assets from a Business**

HUD regulations require HAWC to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

### **PHA Policy**

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of a tenant family provided an up-front loan of \$2,000 to help a business get started, HAWC will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

## **Co-owned Businesses**

### **PHA Policy**

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

## **6A-I.G. Assets**

[24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]

### **Overview**

There is no asset limitation for participation in the public housing program. However, HUD requires that HAWC 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, HAWC must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

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

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

## **General Policies**

### **Income from Assets**

HAWC 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 HAWC 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) HAWC 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, HAWC can take into consideration past rental income along with the prospects of obtaining a new tenant.

#### **PHA Policy**

Any time current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to HAWC 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 HAWC to make a distinction between an asset's market value and its cash value.

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

#### **PHA Policy**

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

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

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

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

[24 CFR 5.609(b)(3)]

When net family assets are \$5,000 or less, HAWC 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, HAWC 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 HAWC to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

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

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

### **Jointly Owned Assets**

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

#### **PHA Policy**

If an asset is owned by more than one person and any family member has unrestricted access to the asset, HAWC 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, HAWC will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, HAWC 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 HAWC 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**

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

PHA Policy

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

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

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

### **Separation or Divorce**

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

#### PHA Policy

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

### **Foreclosure or Bankruptcy**

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

### **Family Declaration**

#### PHA Policy

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. HAWC may verify the value of the assets disposed of if other information available to HAWC does not appear to agree with the information reported by the family.

## **Types of Assets**

### **Checking and Savings Accounts**

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

#### PHA Policy

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

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

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

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

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

#### PHA Policy

In determining the market value of an investment account, HAWC 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), HAWC will calculate asset income based on the earnings for the most recent reporting period.

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

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

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

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

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

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

#### PHA Policy

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

### **Trusts**

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

#### **Revocable Trusts**

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

#### **Nonrevocable Trusts**

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

### **Retirement Accounts**

#### Company Retirement/Pension Accounts

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

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

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

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

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

## **Personal Property**

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

### **PHA Policy**

In determining the value of personal property held as an investment, HAWC will use the family's estimate of the value. HAWC may obtain an appraisal if there is reason to believe that the family's estimated value is off by \$50 or more. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

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

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

### **PHA Policy**

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

## **Life Insurance**

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

## ***6A-I.H. Periodic Payments***

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

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

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



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

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

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)]. Additionally, any deferred disability benefits that are received in a lump sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [FR Notice 11/24/08].

#### **PHA Policy**

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

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

### **Treatment of Overpayment Deductions from Social Security Benefits**

HAWC must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, HAWC must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2018-24].

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

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship care payments are considered equivalent to foster care payments and are also excluded from annual income [Notice PIH 2008-40].

#### **PHA Policy**

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

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]

- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. Note: EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].

### ***6A-I.I. Payments In Lieu Of Earnings***

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

### ***6A-I.J. Welfare Assistance***

#### **Overview**

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

#### **Sanctions Resulting in the Reduction of Welfare Benefits**

[24 CFR 5.615]

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

#### **Covered Families**

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

#### **Imputed Income**

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or

work activities requirement, the HAWC must include in annual income “imputed” welfare income. HAWC must request that the welfare agency inform HAWC 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 HAWC’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)].

### ***6A-I.K. Periodic and Determinable Allowances***

[24 CFR 5.609(b)(7)]

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

### **Alimony and Child Support**

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

#### **PHA Policy**

HAWC will count court-awarded amounts for alimony and child support unless HAWC verifies that the payments are not being made. [HCV GB, pp. 5-23 and 5-47].

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

### **Regular Contributions or Gifts**

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

### PHA Policy

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

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

### ***6A-I.L. Additional Exclusions from Annual Income***

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

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)].

### PHA Policy

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

- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:
  - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
  - (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
  - (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))

- (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
- (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
- (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931).)
- (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
- (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
- (i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu)
- (j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858g)
- (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805)
- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

## **PART II: Adjusted Income**

### ***6A-II.A. Introduction***

#### **Overview**

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

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

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

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

#### **Anticipating Expenses**

##### **PHA Policy**

Generally, HAWC 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), HAWC will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, HAWC 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. HAWC may require the family to provide documentation of payments made in the preceding year.

### **6A-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)].

### **6A-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].

### **6A-II.D. Medical Expenses Deduction**

[24 CFR 5.611(a)(3)(i)]

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

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

### **Definition of Medical Expenses**

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

#### **PHA Policy**

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

### **Summary of Allowable Medical Expenses from IRS Publication 502**

- Services of medical professionals
- Surgery and medical procedures that are necessary, legal, non-cosmetic
- Services of medical facilities
- Hospitalization, long-term care, and in-home nursing services
- Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor
- Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)
- Substance abuse treatment programs
- Psychiatric treatment

- Ambulance services and some costs of transportation related to medical expenses
- The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
- Cost and continuing care of necessary service animals
- Medical insurance premiums or the cost of a health maintenance organization (HMO)

Note: The above provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.

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

### **PHA Policy**

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

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

## ***6A-II.E. Disability Assistance Expenses Deduction***

[24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]

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

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

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

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

### **PHA Policy**

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, HAWC 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 HAWC determines that the disability assistance expenses enable more than one family member to work, the disability assistance expenses will be capped by the sum of the family members' incomes [PH Occ GB, p. 124].

### **Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the PH Occupancy Guidebook as follows: "Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals" [PH Occ GB, p. 124], but only if these items are directly related to permitting the disabled person or other family member to work [HCV GB, p. 5-30]. HUD advises PHAs to further define and describe auxiliary apparatus [VG, p. 30].

### **Eligible Auxiliary Apparatus**

#### **PHA Policy**

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

### **Eligible Attendant Care**

The family determines the type of attendant care that is appropriate for the person with disabilities.

#### **PHA Policy**

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, HAWC will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the

calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### **Payments to Family Members**

No disability expenses may be deducted for payments to a member of a tenant family [23 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the tenant family may be deducted if they are reimbursed by an outside source.

### **Necessary and Reasonable Expenses**

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

#### **PHA Policy**

HAWC determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, HAWC will collect information from organizations that provide services and support to persons with disabilities. A family may present, and HAWC will consider, the family's justification for costs that exceed typical costs in the area.

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

#### **PHA Policy**

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

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

### ***6A-II.F. Child Care Expense Deduction***

HUD defines child care expenses at 24 CFR 5.603(b) as "amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income."

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family's household [VG, p. 26]. However, child care expenses for

foster children that are living in the assisted family's household, are included when determining the family's child care expenses.

## **Qualifying for the Deduction**

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

#### **PHA Policy**

The family must identify the family member(s) enabled to pursue an eligible activity. The term eligible activity in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family's request, HAWC will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

### **Seeking Work**

#### **PHA Policy**

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the child care expense being allowed by HAWC.

### **Furthering Education**

#### **PHA Policy**

If the child care expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

### **Being Gainfully Employed**

#### **PHA Policy**

If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

### **Earned Income Limit on Child Care Expense Deduction**

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person’s earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, child care expenses are limited to \$5,000.

HAWC must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

#### **PHA Policy**

When the child care expense being claimed is to enable a family member to work, only one family member’s income will be considered for a given period of time. When more than one family member works during a given period, HAWC 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. HAWC may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

### **Allowable Child Care Activities**

#### **PHA Policy**

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.

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

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the HAWC will

prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### **Necessary and Reasonable Costs**

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

#### **PHA Policy**

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of child care costs, HAWC will use the schedule of child care costs from the local welfare agency. Families may present, and HAWC will consider, justification for costs that exceed typical costs in the area.

### ***6A-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 HAWC offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions [PH Occ GB, p. 128].

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

#### **PHA Policy**

HAWC has opted not to use permissive deductions.

## **PART III: Calculating Rent**

### ***6A-III.A. Overview of Income-Based Rent Calculations***

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the tenant rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is

called the utility reimbursement, which may be paid to the family or directly to the utility company by HAWC.

### **TTP Formula**

[24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for a tenant family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by the HAWC

HAWC has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

### **Welfare Rent**

[24 CFR 5.628]

#### **PHA Policy**

Welfare rent does not apply in this locality.

### **Minimum Rent**

[24 CFR 5.630]

#### **PHA Policy**

The minimum rent for this locality is \$50.

### **Optional Changes to Income-Based Rents**

[24 CFR 960.253(c)(2) and PH Occ GB, pp. 131 134]

PHAs have been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory deductions. At the discretion of HAWC, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

HAWC's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to HAWC designed income-based rents in the same manner as they are applied to the regulatory income-based rents.

The choices are limited only by the requirement that the method used not produce a TTP or tenant rent greater than the TTP or tenant rent produced under the regulatory formula.

#### PHA Policy

The PHA chooses not to adopt optional changes to income-based rents.

### **Ceiling Rents**

[24 CFR 960.253 (c)(2) and (d)]

Ceiling rents are used to cap income-based rents. They are part of the income-based formula. If the calculated TTP exceeds the ceiling rent for the unit, the ceiling rent is used to calculate tenant rent (ceiling rent/TTP minus utility allowance). Increases in income do not affect the family since the rent is capped. The use of ceiling rents fosters upward mobility and income mixing.

Because of the mandatory use of flat rents, the primary function of ceiling rents now is to assist families who cannot switch back to flat rent between annual reexaminations and would otherwise be paying an income-based tenant rent that is higher than the flat rent.

Ceiling rents must be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities) [PH Occ GB, p. 135].

#### PHA Policy

The PHA chooses not to use ceiling rents.

### **Utility Reimbursement**

[24 CFR 960.253(c)(3)]

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. HUD permits HAWC to pay the reimbursement to the family or directly to the utility provider.

#### PHA Policy

Generally, HAWC will make utility reimbursements to the family. However, HAWC may, at its discretion, make utility reimbursements to the utility provider of the family's choice.

If HAWC elects to pay the reimbursement to a utility provider, at the time of an initial move in of an assisted unit or at an annual reexamination, the assisted family must specify, in writing, to HAWC which utility provider it chooses to pay with the utility reimbursement.

HAWC will make utility reimbursements to the utility provider of the family's choice. Utility reimbursements will only be made for necessary services, which include: electricity, gas (natural or bottle), water, sewer, or garbage.

HAWC will notify the family in writing of the amount of the utility reimbursement, and the utility company that the reimbursement will be paid to. The family may, at annual reexamination, elect to change the utility company the reimbursement is sent to.

## ***6A-III.B. Financial Hardships Affecting Minimum Rent***

[24 CFR 5.630]

### **Overview**

HAWC may grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If HAWC determines that a hardship exists, the TTP is the highest of the remaining components of the family's calculated TTP.

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

Financial hardship includes the following situations:

- (1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

#### **PHA Policy**

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

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

#### **PHA Policy**

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent or tenant-paid utilities.

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.
- (4) A death has occurred in the family.

#### **PHA Policy**



In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member’s income).

(5) The family has experienced other circumstances determined by the HAWC.

**PHA Policy**

HAWC has not established any additional hardship criteria.

**Implementation of Hardship Exemption**

**Determination of Hardship**

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

HAWC then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

**PHA Policy**

HAWC defines temporary hardship as a hardship expected to last 90 days or less. Long term hardship is defined as a hardship expected to last more than 90 days.

HAWC may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family’s request for a hardship exemption.

When the minimum rent is suspended, the TTP reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

TTP – No Hardship		TTP – With Hardship	
\$0	30% of monthly adjusted income	\$0	30% of monthly adjusted income
\$15	10% of monthly gross income	\$15	10% of monthly gross income
N/A	Welfare rent	N/A	Welfare rent
\$50	Minimum rent	\$50	Minimum rent
Minimum rent applies. TTP = \$50		Hardship exemption granted. TTP = \$15	

**PHA Policy**

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family’s ability to pay the minimum rent.

HAWC will make the determination of hardship within 30 calendar days.

### **No Financial Hardship**

If HAWC determines there is no financial hardship, HAWC will reinstate the minimum rent and require the family to repay the amounts suspended.

For procedures pertaining to grievance hearing requests based upon HAWC's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

#### **PHA Policy**

HAWC will require the family to repay the suspended amount within 30 calendar days of the HAWC's notice that a hardship exemption has not been granted.

### **Temporary Hardship**

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

#### **PHA Policy**

HAWC will enter into a repayment agreement in accordance with the PHA's repayment agreement policy (see Chapter 16).

### **Long-Term Hardship**

If HAWC determines that the financial hardship is long-term, HAWC must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

#### **PHA Policy**

The hardship period ends when any of the following circumstances apply:

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to

exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.

- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

### **6A-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, HAWC must use the utility allowance applicable to the type of dwelling unit leased by the family.

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

#### **Reasonable Accommodation**

[24 CFR 8]

On request from a family, PHAs must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability [PH Occ GB, p. 172].

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies related to reasonable accommodations.

#### **Utility Allowance Revisions**

[24 CFR 965.507]

HAWC must review its schedule of utility allowances each year. Between annual reviews, HAWC must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based. Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective [PH Occ GB, p. 171].

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

#### **PHA Policy**

Unless HAWC 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. HAWC will not perform a re-exam solely for the purposes of implementing a new utility allowance.

### **6A-III.D. Prorated Rent for Mixed Families**

[24 CFR 5.520]

HUD regulations prohibit assistance to ineligible family members. A mixed family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. HAWC must prorate the assistance provided to a mixed family. HAWC will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, HAWC must:

- (1) Subtract the TTP from a maximum rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible.
- (2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy).
- (3) Multiply the member maximum subsidy by the number of eligible family members.
- (4) Subtract the subsidy calculated in the last step from the maximum rent. This is the prorated TTP.
- (5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family.

#### **PHA Policy**

Revised public housing maximum rents will be applied to a family's rent calculation at the first annual reexamination after the revision is adopted.

For policies related to the establishment of the public housing maximum rent see Chapter 16.

### **6A-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 HAWC is the amount the family pays. Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

Policies related to the reexamination of families paying flat rent are contained in Chapter 9, and policies related to the establishment and review of flat rents are contained in Chapter 16.

## **Family Choice in Rents**

[24 CFR 960.253(a) and (e)]

Once each year, HAWC must offer families the choice between a flat rent and an income-based rent. The family may not be offered this choice more than once a year. HAWC must document that flat rents were offered to families under the methods used to determine flat rents for HAWC.

### **PHA Policy**

The annual PHA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination.

HAWC 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.

HAWC must provide sufficient information for families to make an informed choice. This information must include HAWC's policy on switching from flat rent to income-based rent due to financial hardship and the dollar amount of the rent under each option. However, if the family chose the flat rent for the previous year, HAWC is required to provide an income-based rent amount only in the year that a reexamination of income is conducted or if the family specifically requests it and submits updated income information.

## **Switching from Flat Rent to Income-Based Rent Due to Hardship**

[24 CFR 960.253(f)]

A family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If HAWC determines that a financial hardship exists, HAWC must immediately allow the family to switch from flat rent to the income-based rent.

### **PHA Policy**

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

Reasons for financial hardship include:

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items
- Such other situations determined by HAWC to be appropriate

### **PHA Policy**

HAWC considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent [PH Occ GB, p. 137].

## Change in Flat Rents

### PHA Policy

Changes to flat rents, up or down, will not affect families paying flat rent until their next annual flat rent offer, at which time the family will be given the choice of switching back to income-based rent or of remaining on flat rent at the current (most recently adjusted) flat rent for their unit [PH Occ GB, pp. 137-138].

### Phasing in Flat Rents [Notice PIH 2014-12]

For current residents whose rent would increase as a result of new flat rent requirements, HAWC must restrict the increases to no more than 35 percent of the current tenant rent per year. This would necessitate a phase in of the rent increase.

#### EXAMPLE

A family was paying a flat rent of \$500 per month. At their annual recertification, HAWC has increased the flat rent for their unit size to \$700. The PHA would conduct a flat rent impact analysis as follows:

$$\$500 \times 1.35 = \$675$$

Since HAWC's increased flat rent of \$700 would result in a rent increase of more than 35 percent, HAWC would offer the family the choice to pay either \$675 per month or an income-based rent. The flat rent increase would need to be phased in.

### PHA Policy

HAWC will conduct a flat rent impact analysis to determine the percentage increase in the family's rent amount. If the increase is greater than 35 percent, the PHA will phase-in the rent increase at the maximum amount annually over the three-year period so that it does not exceed 35 percent in any year until the flat rent is fully phased in. If the increase is 35 percent or less, there will be no phase-in. [Notice PIH 2017-23; 24 CFR 960.253(b)].

## Flat Rents and Earned Income Disallowance

### [A&O FAQs]

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

A family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their 48 month period would have the 12 cumulative months of full (100 percent) and phase-in (50 percent) exclusion continue while paying flat rent as long as the employment that is the subject of the exclusion continues, and the 48-month lifetime limit would continue uninterrupted. A family paying flat rent could therefore see a family member's 48-month lifetime limit expire while the family is paying flat rent.

## **Flat Rents and Mixed Families**

[A&O FAQs]

Mixed families electing to pay flat rent must first have a flat rent worksheet completed to see if the flat rent must be prorated. The worksheet is located in Appendix III of the Form HUD-50058 Instruction Booklet.

If the flat rent is greater than or equal to the public housing maximum rent, there is no proration of flat rent and the family pays the flat rent for the unit.

If the flat rent is less than the maximum rent, the worksheet will calculate a prorated flat rent. The mixed family will pay the prorated flat rent.

## **EXHIBIT(S)**

### ***EXHIBIT 6-1: Annual Income Inclusions***

24 CFR 5.609

(a) Annual income means all amounts, monetary or not, which:

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

(b) Annual income includes, but is not limited to:

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family

- assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- (4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
  - (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);
  - (6) Welfare assistance payments.
    - (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
      - (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31 ; and
      - (B) Are not otherwise excluded under paragraph (c) of this section.
        - (ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
          - (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
          - (B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
  - (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
  - (8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)
  - (9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

## **HHS Definition of "Assistance"**

### **45 CFR: General Temporary Assistance for Needy Families**

260.31 What does the term "assistance" mean?

(a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).



- (2) It includes such benefits even when they are:
- (ii) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and
  - (iii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).
- (3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.
- (b) [The definition of “assistance”] excludes:
- (1) Nonrecurrent, short-term benefits that:
- (ii) Are designed to deal with a specific crisis situation or episode of need;
  - (iii) Are not intended to meet recurrent or ongoing needs; and
  - (iv) Will not extend beyond four months.
- (2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
  - (3) Supportive services such as child care and transportation provided to families who are employed;
  - (4) Refundable earned income tax credits;
  - (5) Contributions to, and distributions from, Individual Development Accounts;
  - (6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and
  - (7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance

## ***EXHIBIT 6-2: Annual Income Exclusions***

24 CFR 5.609

- (c) Annual income does not include the following:
- (1) Income from employment of children (including foster children) under the age of 18 years;
  - (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
  - (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
  - (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
  - (5) Income of a live-in aide, as defined in Sec. 5.403;

- (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;
- (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);
- (iv) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- (v) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
- (vi) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) [Reserved]
- (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
- (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
- (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

- (18) Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits
- (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));
  - (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);
  - (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
  - (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
  - (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
  - (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);
  - (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);
  - (h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);
  - (i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
  - (j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));
  - (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
  - (l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
  - (m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
  - (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));
  - (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
  - (p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));
  - (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);
  - (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and
  - (s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

## ***EXHIBIT 6-3: Treatment of Family Assets***

### 24 CFR 5.603(b) Net Family Assets

- (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.
- (2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.
- (3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.
- (4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

## ***EXHIBIT 6-4: Earned Income Disallowance***

### 24 CFR 960.255 Self-sufficiency incentive–Disallowance of increase in annual income.

(a) Definitions. The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in public housing:

- (ii) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

- (iii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or
- (iv) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500.

(b) Disallowance of increase in annual income.

- (1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in 5.609 of this title) of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.
- (2) Second twelve month exclusion and phase-in. During the second cumulative twelve month period after the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.
- (3) Maximum four year disallowance. The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 48 month period. It only applies for a maximum of twelve months for disallowance under paragraph (b)(1) and a maximum of twelve months for disallowance under paragraph (b)(2), during the 48 month period starting from the initial exclusion under paragraph (b)(1) of this section.

(c) Inapplicability to admission. The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) Individual Savings Accounts. As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

- (1) The PHA must advise the family that the savings account option is available;
- (2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;
- (3) Amounts deposited in a savings account may be withdrawn only for the purpose of:
  - (i) Purchasing a home;

- (ii) Paying education costs of family members;
- (iii) Moving out of public or assisted housing; or
- (iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;
- (4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;
- (5) At least annually the PHA must provide the family with a report on the status of the account; and
- (6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA

### ***EXHIBIT 6-5: The Effect of Welfare Benefit Reduction***

24 CFR 5.615

Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) Definitions. The following definitions apply for purposes of this section:

**Covered families.** Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

**Economic self-sufficiency program.** See definition at Sec. 5.603.

**Imputed welfare income.** The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

**Specified welfare benefit reduction.**

- (1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.
- (2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:
  - (i) at expiration of a lifetime or other time limit on the payment of welfare benefits;
  - (ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or
  - (iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

- (1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.
- (2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.
- (3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).
- (4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed
- (5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) Review of PHA decision.

- (1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.
- (2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) PHA relation with welfare agency.

- (1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.
- (2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.
- (3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.



## **Chapter 6B: Income and Rent Determinations Effective on or After the HOTMA Compliance Date**

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

### **Introduction**

This chapter incorporates mandatory changes to PHA policy to implement the Housing Opportunity through Modernization Act (HOTMA). Income and rent determinations effective prior to the HOTMA compliance date will be conducted in accordance with Chapter 6A. The HOTMA compliance date will be determined following HUD guidance regarding the timing of the necessary HUD software updates. HAWC will notify all program participants of the HOTMA compliance date once it is determined.

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

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

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

Part III: Adjusted Income. Once annual income has been established, HUD regulations require the PHA to subtract from annual income any of five mandatory deductions for which a family qualifies and allow the PHA to adopt additional permissive deductions. These requirements and PHA policies for calculating adjusted income are found in Part III.

Part IV: Calculating Rent. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining family rent payment. Also included here are flat rents and the family's choice of rent.

### **PART I: Annual Income**

#### ***6B-1.A. Overview***

[24 CFR 5.609]

Annual income includes:

- All amounts, not specifically excluded in 24 CFR 5.609(b);
- All amounts received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse;
- Unearned income by or on behalf of each dependent who is under 18 years of age; and

- Imputed returns of an asset based on the current passbook savings rate, as determined by HUD, when the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually) and the actual returns from a given asset cannot be calculated.

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

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but did not receive. For example, a family’s child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [Notice PIH 2023-27].

Annual income also includes all actual anticipated income from assets (provided the income is not otherwise excluded) even if the asset itself is excluded from net family assets [Notice PIH 2023-27]. 24 CFR 5.603(b)(1) describes HUD regulations for treating specific types of assets.

The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Full Definition (Exhibit 6-1)

Treatment of Family Assets (Exhibit 6-2)

The Effect of Welfare Benefit Reduction (Exhibit 6-3)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. Verification requirements for annual income are discussed in Chapter 7.

## ***6B-I.B. Household Composition and Income***

### **Overview**

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition in accordance with HUD regulations and PHA policies in Chapter 9. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

<b>Summary of Income Included and Excluded by Person</b>	
Live-in aides	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster child or foster adult	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].

Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included [24 CFR 5.609(a)].
Minors	Earned income of children under 18 years of age is excluded [24 CFR 5.609(b)(3)]. All sources of unearned income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or cohead)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(14)]. All sources of unearned income, except those specifically excluded by the regulations, are included.

### **Temporarily Absent Family Members**

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

#### **PHA Policy**

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

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

### **Absent Students**

#### **PHA Policy**

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

### **Absences Due to Placement in Foster Care**

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

#### **PHA Policy**

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

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

### **PHA Policy**

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

## **Family Members Confined for Medical Reasons**

If a family member is confined to a nursing home or hospital on a permanent basis, PHAs may determine that that person is no longer a member of the assisted household, and the income of that person is not counted [New PH OCC GB, *Income Determinations*, p. 12].

### **PHA Policy**

The PHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or cohead qualifies as an elderly person or a person with disabilities.

## **Joint Custody of Children**

### **PHA Policy**

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

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

## **Caretakers for a Child**

### **PHA Policy**

The approval of a caretaker is at the owner and PHA's discretion and subject to the owner and PHA's screening criteria. If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the PHA will take the following actions.

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

If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the

caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases the PHA will extend the caretaker's status as an eligible visitor.

At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.

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.

### ***6B-I.C. Calculating Annual Income***

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

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

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

##### **PHA Policy**

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

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

In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the PHA annualized projected income.

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

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

**Example:** An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the new admission or interim reexamination. In such a case the PHA would calculate annual income as follows:  $(\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the PHA will calculate annual income using current circumstances and then, should the change in income require

the PHA to conduct an interim reexamination, conduct an interim reexamination in accordance with PHA policy in Chapter 9.

### **Calculating Annual Income at Annual Reexamination [24 CFR.609(c)(2); Notice PIH 2023-27]**

At annual reexamination, PHAs must first determine the family's income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with PHA policies in Chapter 9 and HUD regulations, must be considered. If, however, there have been no changes to income, then the amount of income calculated for the previous 12-month period is the amount that will be used to determine the family's rent. Income from assets is always anticipated, irrespective of the income examination type. Policies related to conducting annual reexaminations are located in Chapter 9.

### ***6B-I.D. Earned Income***

#### **Wages and Related Compensation [24 CFR 5.609(a); Notice PIH 2023-27]**

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

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

A *day laborer* is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future [24 CFR 5.603(b)].

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

#### **PHA Policy**

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

For persons who regularly receive bonuses or commissions, the PHA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the PHA will use the prior year amounts. In either case the family may provide, and the PHA will consider, a credible justification for not using this

history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the PHA will count only the amount estimated by the employer. The file will be documented appropriately.

### **Military Pay**

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

### **Earnings of a Minor [24 CFR 5.609(b)(3)]**

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

### **Earned Income of Full-Time Students [24 CFR 5.609(b)(14)]**

The earned income of a dependent full-time student in excess of the amount of the dependent deduction is excluded from annual income. All sources of unearned income, except those specifically excluded by the regulations, are included.

A family member other than the head of household or spouse/cohead is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.603(b)]. Full-time status is defined by the educational or vocational institution the student is attending [New PH OCC GB, *Lease Requirements*, p. 5].

### ***6B-I.E. Earned Income Disallowance***

[24 CFR 960.255; Streamlining Final Rule (SFR) Federal Register 3/8/16; Notice PIH 2023-27]

HOTMA removed the statutory authority for the EID. The EID is available only to families that are eligible for and participating on the program as of December 31, 2023, or before; no new families may be added on or after January 1, 2024. If a family is receiving the EID prior to or on the effective date of December 31, 2023, they are entitled to the full amount of the benefit for a full 24-month period. The policies below are applicable only to such families. No family will still be receiving the EID after December 31, 2025. The EID will sunset on January 1, 2026, and the PHA policies below will no longer be applicable as of that date or when the last qualifying family exhausts their exclusion period, whichever is sooner.

### **Calculation of the Disallowance**

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with their "baseline income." The family member's baseline income is their income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that they are participating in the EID.

### **Calculation Method**

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

During the initial exclusion period of 12 consecutive months, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded.

**PHA Policy**

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

**Second 12-Month Exclusion**

During the second exclusion period of 12 consecutive months, the PHA must exclude at least 50 percent of any increase in income attributable to employment or increased earnings.

**PHA Policy**

During the second 12-month exclusion period, the PHA will exclude 100 percent of any increase in income attributable to new employment or increased earnings.

**Lifetime Limitation**

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24-month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance. The EID will sunset on January 1, 2026. In no circumstances will a family member's exclusion period continue past January 1, 2026.

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

The PHA may, but is not required to, establish a policy to offer a qualified family paying income-based rent an ISA instead of being given the EID.

**PHA Policy**

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

***6B-I.F. Business and Self-Employment Income***

[24 CFR 5.609(b)(28); Notice PIH 2023-27]

Annual income includes "net income from the operation of a business or profession. *Net income* is gross income minus business expenses that allows the business to operate. *Gross income* is all income amounts received into the business, prior to the deduction of business expenses.

Expenditures for business expansion or amortization of capital indebtedness may not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family."

**PHA Policy**



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

## **Independent Contractors**

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 2.609 (b)(24)].

An *independent contractor* is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b)].

## **Business Expansion**

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

### **PHA Policy**

*Business expansion* is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

## **Capital Indebtedness**

HUD regulations do not permit the PHA to deduct from gross income the amortization of capital indebtedness.

### **PHA Policy**

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

## **Negative Business Income**

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

## **Withdrawal of Cash or Assets from a Business**

HUD regulations require the PHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

### **PHA Policy**

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of \$2,000 to help a business get started, the PHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

## **Co-owned Businesses**

### **PHA Policy**

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

## **Assets Owned by a Business Entity**

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

## ***6B-I.G. Student Financial Assistance***

[24 CFR 5.609(b)(9)]

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

### **Types of Assistance**

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

Examples of assistance under title IV of the HEA include:

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

Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the

Federally mandated income exclusions are excluded [24 CFR 5.609(b)(9)(ii)]. *Actual covered costs* are defined as the actual costs of:

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

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

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

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

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

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

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

Student financial assistance, does not include:

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

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

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

### PHA Policy

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

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

#### **Example 1**

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

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

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

**Example 2**

- Actual covered costs: \$25,000
- Title IV HEA assistance: \$26,000
- Title IV HEA assistance covers the students entire actual covered costs.
- Other Student Financial Assistance: \$5,000
- Excluded income: The entire Title IV HEA assistance of \$26,000
- Included income: All other financial assistance of \$5,000

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

### Example 3

- Actual covered costs: \$22,000
- Title IV HEA assistance: \$15,000
- The remaining amount not covered by Title IV HEA assistance is \$7,000 (\$22,000 in actual covered costs - \$15,000 in Title IV HEA assistance).
- Other Student Financial Assistance: \$5,000
- \$7,000 in remaining actual covered costs - \$5,000 in other financial assistance
- Excluded income: \$15,000 entire amount of the Title IV HEA Assistance + \$5,000 in other financial assistance
- Included income: \$0

### Example 4

- Actual covered costs: \$18,000
- Title IV HEA Assistance: \$15,000
- The remaining amount not covered by Title IV HEA assistance is \$3,000 (\$18,000 in actual covered costs - \$15,000 in Title IV HEA Assistance)
- Other student Financial Assistance: \$5,000
- When other student financial assistance is applied, financial assistance exceeds actual covered costs by \$2,000 (\$3,000 in actual covered costs - \$5,000 in other financial assistance).
- Included income: \$2,000 (the amount by which the financial aid exceeds the student's actual covered costs).

## ***6B-I.H. Periodic Payments***

[Notice PIH 2023-27]

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

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

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income. Payments received in lieu of wages for worker's compensation are excluded, even if paid in periodic payments, if the income will last for a period of less than one year.

### **Lump-Sum Payments for the Delayed Start of a Periodic Payment [24 CFR 5.609(b)(16)]**

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

#### **PHA Policy**

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

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

If the delayed-start payment is received outside of the time the PHA is processing an annual reexamination, then the PHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, the PHA will conduct an interim in accordance with PHA policies in Chapter 9. If not, the PHA will consider the amount when processing the family's next annual recertification.

### **Retirement Accounts**

[24 CFR 5.609(b)(26); Notice PIH 2023-27]

Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals is not considered actual income from assets.

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

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

### **Social Security Benefits**

[Notice PIH 2023-27]

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

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal Social Security and SSI benefits are adjusted to reflect the

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

#### **PHA Policy**

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

### **Alimony and Child Support**

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family's child-support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [Notice PIH 2023-27].

#### **PHA Policy**

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

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

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

- If payments are being made regularly, the PHA will use the amount received during the last 12 months (excluding any lump sums received).
- If payments have been made for a period less than 12 months, the PHA will average all payments that have been made.
- At new admission or interim recertification, if any lump sum payments were made in the past 12 months, the PHA will determine the likelihood of the family receiving another similar payment within the next 12 months before deciding whether or not this amount will be included in the calculation of annual income.
- If the PHA determines and can appropriately verify that the family in all likelihood will not receive a similar payment, then the amount will not be considered when projecting annual income.
- If the PHA determines that it is likely that the family will receive a similar payment and can appropriately verify it, the amount will be included when projecting annual income.



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

### ***6B-I.I. Nonrecurring Income***

[24 CFR 5.609(b)(24) and Notice PIH 2023-27]

Nonrecurring income, which is income that will not be repeated beyond the coming year (e.g., 12 months following the effective date of the certification) based on information provided by the family, is excluded from annual income. The PHA may accept a self-certification from the family stating that the income will not be repeated in the coming year. See Chapter 7 for PHA policies related to verification of nonrecurring income.

Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income as nonrecurring income, even if the source, date, or amount of the income varies.

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

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

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

Nonrecurring income that is excluded under the regulations includes:

- Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment [24 CFR 5.609(b)(24)(i)].
- Direct federal or state payments intended for economic stimulus or recovery [24 CFR 5.609(b)(24)(ii)].
- Amounts directly received by the family as a result of state refundable tax credits or state or federal tax refunds at the time they are received [24 CFR 5.609(b)(24)(iii) and (iv)].
- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries) [24 CFR 5.609(b)(24)(v)].
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization [24 CFR 5.609(b)(24)(vi)]. When calculating annual income, PHAs are prohibited from assigning monetary value to non-monetary in-kind donations received by the family [Notice PIH 2023-27]. Non-recurring, non-monetary in-kind donations from friends and family are excluded as non-recurring income.

- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii)].

## ***6B-I.J. Welfare Assistance***

### **Overview**

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

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

The PHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-3. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

### **Covered Families**

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

### **Imputed Income**

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, the PHA must include in annual income “imputed” welfare income. The PHA must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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

### **Offsets**

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

## ***6B-I.K. State Payments to Allow Individuals With Disabilities to Live at Home***

[24 CFR 5.609(b)(19)]

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

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

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

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

### ***6B-I.L. Civil Rights Settlements***

[24 CFR 5.609(b)(25); FR Notice 2/14/23]

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

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets (e.g., if the funds are deposited into the family's savings account or a revocable trust under the control of the family or some other asset that is not excluded from the definition of *net family assets*). Income generated on the settlement or judgment amount after it has become a net family asset is not excluded from income. For example, if the family received a settlement or back pay and deposited the money in an interest-bearing savings account, the interest from that account would be income at the time the interest is received.

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

### ***6B-I.M. Additional Exclusions From Annual Income***

[24 CFR 5.609(b)]

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

- Payments received for the care of foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(b)(4)].
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR 5.609(b)(5)] However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income [Notice PIH 2023-27].
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6)].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7)].
- Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10)].
- Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10)].
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17)]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20)]. The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [Notice PIH 2023-27].
- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members in excess of the first \$2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income in HUD programs that adopt the definitions of *annual income* in 24 CFR 5.609, the Census Long Form, and the IRS Form 1040, including the programs affected by Notice PIH 2023-27.
- Replacement housing "gap" payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is

subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing “gap” payments [24 CFR 5.609(b)(23)].

- Income earned on amounts placed in a family’s Family Self-Sufficiency account [24 CFR 5.609(b)(27)].

Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(12)(ii)].

- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(b)(12)(i)].
- Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development [24 CFR 5.600(b)(12)(iii)].
- Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv)].

#### PHA Policy

The PHA defines *training program* as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period of time. It is designed to lead to a higher level of proficiency, and it enhances the individual’s ability to obtain employment. It may have performance standards to measure proficiency. Training may include but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

The PHA defines *incremental earnings and benefits* as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, the PHA will use as the pre-enrollment income the total annualized amount of the family member’s welfare assistance and earnings reported on the family’s most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the PHA’s interim reporting requirements (see Chapter 11).

- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(b)(13)].
- Adoption assistance payments for a child in excess of the amount of the dependent deduction per adopted child [24 CFR 5.609(b)(15)].

- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(b)(20)].

Amounts that HUD is required by federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(b) apply. HUD will publish a notice in the *Federal Register* to identify the benefits that qualify for this exclusion. Updates will be published when necessary [24 CFR 5.609(b)(22)].

- HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the *Federal Register* on May 20, 2014. It includes:
  - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
  - (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
  - (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
  - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
  - (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
  - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
  - (g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
  - (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
  - (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
  - (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
  - (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
  - (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
  - (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
  - (n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))

- (o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
- (q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (r) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (t) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-249) (See Section 6-I.L. for exceptions.)
- (v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (w) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002
- (y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013-30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))
- (z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations
- (aa) Distributions from an ABLÉ account, and actual or imputed interest on the ABLÉ account balance [See also Notice PIH 2019-09]

## **PART II: Assets**

### ***6B-II.A. Overview***

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

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

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

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

#### **PHA Policy**

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

Any time current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases, the family may present information and documentation to the PHA to show why the asset income determination does not represent the family's anticipated asset income.

### ***6B-II.B. Assets Disposed of for Less than Fair Market Value***

[24 CFR 5.603(b)(2)]

PHAs must include the value of any business or family assets disposed of by an applicant or participant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application or reexamination, as applicable, in excess of the consideration received for the asset.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value. [Notice PIH 2023-27].

#### **Minimum Threshold**

HUD does not specify a minimum threshold for counting assets disposed of for less than fair market value. A PHA may establish a policy to ignore small amounts such as charitable contributions [New PH OCC GB, *Income Determinations*, p. 24].

#### **PHA Policy**



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

### **Separation or Divorce**

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

#### **PHA Policy**

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

### **Foreclosure or Bankruptcy**

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

### **Asset Owned by a Business Entity**

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

### **Family Declaration**

#### **PHA Policy**

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. The PHA may verify the value of the assets disposed of if other information available to the PHA does not appear to agree with the information reported by the family.

## ***6B-II.C. Asset Inclusions and Exclusions***

### **Checking and Savings Accounts**

[Notice PIH 2023-27]

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

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

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

### **ABLE Accounts**

[24 CFR 5.609(b)(10); Notice PIH 2019-09]

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses. Section 103 of the ABLE Act mandates that an individual's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is excluded when determining the designated beneficiary's eligibility and continued occupancy under certain federal means-tested programs. The PHA must exclude the entire value of the individual's ABLE account from the household's assets. Distributions from the ABLE account are also not considered income. However, all wage income received, regardless of which account the money is paid to, is included as income.

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

[24 CFR 5.603(b)(1)]

HUD considers financial investments such as stocks and bonds non-necessary items of personal property. Whether non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

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

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

#### **[PHA Policy](#)**

The PHA will include interest or dividends earned by investment accounts as actual income from assets even when the earnings are reinvested.

The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

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

### **Necessary and Non-Necessary Personal Property**

[24 CFR 5.603(b)(3)(i)]

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

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

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

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

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

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

Necessary Personal Property	Non-Necessary Personal Property
<p>Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter)</p> <p>Furniture, carpets, linens, kitchenware</p> <p>Common appliances</p> <p>Common electronics (e.g., radio, television, DVD player, gaming system)</p> <p>Clothing</p> <p>Personal effects that are not luxury items (e.g., toys, books)</p> <p>Wedding and engagement rings</p> <p>Jewelry used in religious/cultural celebrations and ceremonies</p> <p>Religious and cultural items</p> <p>Medical equipment and supplies</p> <p>Health care-related supplies</p> <p>Musical instruments used by the family</p> <p>Personal computers, phones, tablets, and related equipment</p> <p>Professional tools of trade of the family, for example professional books</p> <p>Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities</p> <p>Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)</p>	<p>Recreational car/vehicle not needed for day-to-day transportation for personal or business use (campers, motorhomes, traveling trailers, all-terrain vehicles (ATVs))</p> <p>Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds)</p> <p>Recreational boat/watercraft</p> <p>Expensive jewelry without religious or cultural value, or which does not hold family significance</p> <p>Collectibles (e.g., coins/stamps)</p> <p>Equipment/machinery that is not used to generate income for a business</p> <p>Items such as gems/precious metals, antique cars, artwork, etc.</p>

**PHA Policy**

In determining the value of non-necessary personal property, the PHA will use the family's estimate of the value. The PHA may obtain an appraisal if there is reason to believe that the family's estimated value is off by \$50 or more. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

**Lump-Sum Additions to Net Family Assets**

[24 CFR 5.609(b)(24(viii); Notice PIH 2023-27]

The regulations exclude income from lump-sum additions to family assets, including lottery or other contest winnings as a type of nonrecurring income.

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

Further, deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts are also excluded from income.

However, these amounts may count toward net family assets. The PHA must consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by 10 percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter 9. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months of family's income certification period and the PHA chooses not to conduct the examination.

For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.

#### **PHA Policy**

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

### **Jointly Owned Assets**

[Notice PIH 2023-27]

For assets owned jointly by the family and one or more individuals outside of the assisted family, the PHA must include the total value of the asset in the calculation of net family assets, unless:

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

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

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

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

#### **PHA Policy**

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

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

## Trusts

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

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

The following types of trust distributions are excluded from annual income:

- Distributions of the principal or corpus of the trust; and
- Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

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

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

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

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

The value of revocable trusts that are not under the control of the family are excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not "own" the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee. If this is the case, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.

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

Revocable trusts under the control of the family or household (e.g., the grantor is a member of the assisted family or household) are considered assets and must be included in net family assets.

If the value of the trust is considered part of the family's net assets, then distributions from the trust are not considered income to the family. The PHA must count all actual returns (e.g., interest earned) from the trust as income or, if the trust has no actual returns (e.g., if the trust is comprised of farmland that is not in use) and the total value of the combined net family assets exceeds \$50,000 (as that amount is updated for inflation), as imputed returns, as applicable.

### **Life Insurance**

[FR Notice 2/14/23 and Notice PIH 2023-27]

Net family assets do not include the value of term life insurance, which has no cash value to the individual before death.

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets. The cash value is the surrender value. While the cash value of an insurance policy is considered an asset, the face value of any policy is not. If such a policy earns dividends or interest that the family could elect to receive, the amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

### **Tax Refunds**

[24 CFR 5.603(b)(3)(xi) and Notice PIH 2023-27]

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family.

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

If the tax refund or refundable tax credit is deposited into another excluded asset, such as a retirement account or a Coverdell Education Savings Account, then the deposit will have no effect on the balance of the asset (i.e., there is no need for the PHA to subtract the amount of the deposit from the value of the excluded asset).

### **Asset Exclusions**

[24 CFR 5.603(b)]

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

- The value of any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals [24 CFR 5.603(b)(3)(iii)].

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

### ***6B-II.D. Determining Income From Assets***

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



## Net Family Assets

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

### PHA Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions such as settlement costs and transfer taxes [New PH OCC GB, *Income Determinations*, p. 24].

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

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

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

## Actual Income from Assets

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

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

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

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

## Imputed Income from Assets

When net family assets exceed \$50,000 (adjusted annually by HUD), the PHA may not rely on self-certification. If actual returns can be calculated, the PHA must include actual income from the asset on the Form HUD-50058 (for example, a savings account or CD where the rate of return is known).

If actual returns cannot be calculated, the PHA must calculate imputed returns using the HUD-determined passbook rate (for example, real property or a non-necessary item of personal property such as a recreational boat). If the PHA can compute actual income from some but not all assets, the PHA must compute actual returns where possible and use the HUD-determined passbook rate for assets where actual income cannot be calculated [24 CFR 5.609(a)(2)].

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

## **PART III: Adjusted Income**

### ***6B-III.A. Introduction***

#### **Overview**

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

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

(a) *Mandatory deductions*

- (1) \$480 for each dependent (adjusted annually by HUD, rounded to the next lowest multiple of \$25);
- (2) \$525 for any elderly family or disabled family (adjusted annually by HUD, rounded to the next lowest multiple of \$25);
- (3) The sum of the following, to the extent the sum exceeds ten percent of annual income:
  - (i) Unreimbursed health and medical care expenses of any elderly family or disabled family;
  - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed; and
- (4) Any reasonable 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.

#### **Anticipating Expenses**

##### **PHA Policy**

Generally, the PHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), the PHA will estimate costs based on historic data and known future costs.

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

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

### **6B-III.B. Dependent Deduction**

An allowance of \$480 is deducted from annual income for each dependent (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

### **6B-III.C. Elderly or Disabled Family Deduction**

A single deduction of \$525 is taken for any elderly or disabled family (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [24 CFR 5.611(a)(2)].

An *elderly family* is a family whose head, spouse, cohead, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403].

### **6B-III.D. Health and Medical Care Expense Deduction**

[24 CFR 5.611(a)(3)(i)]

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

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

## Definition of Medical Expenses

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

Medical insurance premiums continue to be eligible health and medical care expenses. Health and medical care expenses may be deducted from annual income only if they are eligible and not otherwise reimbursed and may only be deducted for elderly or disabled families.

Although HUD revised the definition of *health and medical care expenses* to reflect the Internal Revenue Service (IRS) general definition of medical expenses, HUD is not permitting PHAs to specifically align their policies with IRS Publication 502 for determining which expenses are included in HUD’s mandatory deduction for health and medical care expenses. PHAs must review each expense to determine whether it is eligible in accordance with HUD’s definition of *health and medical care expenses*.

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

### PHA Policy

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

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

## **6B-III.E. Disability Assistance Expenses Deduction**

[24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]

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

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

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

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

### PHA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the PHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care

provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When the PHA determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members' incomes [New PH OCC GB, *Income Determination*, p. 28].

### **Eligible Auxiliary Apparatus**

[Notice PIH 2023-27]

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

### **Eligible Attendant Care**

[Notice PIH 2023-27]

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

#### **PHA Policy**

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, the PHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### **Payments to Family Members**

No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

### **Necessary and Reasonable Expenses**

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

#### **PHA Policy**

The PHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the PHA will collect information from

organizations that provide services and support to persons with disabilities. A family may present, and the PHA will consider, the family's justification for costs that exceed typical costs in the area.

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

### **PHA Policy**

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

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

## **6B-III.F. Child Care Expense Deduction**

HUD defines *child care expenses* at 24 CFR 5.603(b) as "amounts anticipated to be paid by the family for the care of children under 13 years of age (including foster children) during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for 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."

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

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family's household [VG, p. 26]. However, child care expenses for foster children that are living in the assisted family's household are included when determining the family's child care expenses [HCV GB, p. 5-29].

### **Qualifying for the Deduction**

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

##### **PHA Policy**

The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family's request, the PHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

### **Seeking Work**



### PHA Policy

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the child care expense being allowed by the PHA.

### **Furthering Education**

#### PHA Policy

If the child care expense being claimed is to enable a family member to further their education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

### **Being Gainfully Employed**

#### PHA Policy

If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

### **Earned Income Limit on Child Care Expense Deduction**

When a family member looks for work or furthers their education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person's earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, child care expenses are limited to \$5,000.

The PHA must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

#### PHA Policy

When the child care expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the PHA generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

## **Eligible Child Care Expenses**

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

## **Allowable Child Care Activities**

### **PHA Policy**

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.

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

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the PHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

## **Necessary and Reasonable Costs**

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further their education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

### **PHA Policy**

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of child care costs, the PHA will use the schedule of child care costs from a qualified local entity that either subsidizes child care costs or licenses child care providers. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the area.

## ***6B-III.G. Hardship Exemptions***

[24 CFR 5.611(c), (d), and (e)]

## **Health and Medical Care and Disability Assistance Expenses**

[24 CFR 5.611(c); Notice PIH 2023-27]

The regulations provide for two types of hardship exemption categories for families that qualify for unreimbursed health and medical care expenses and/or disability assistance expenses. A family will



benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of five percent of annual income. In order to claim unreimbursed health and medical care expenses, the family must have a head, cohead, or spouse that is elderly or a person with a disability. In order to claim unreimbursed reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed.

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

### **Phased-In Relief**

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

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

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

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

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

#### **PHA Policy**

The PHA will not continue the phased-in relief for families who move from the HCV program to public housing. These families will be treated as new admissions and the sum of

expenses that exceeds 10 percent of annual income will be used to calculate their adjusted income.

## General Relief

The second category is for families that can demonstrate:

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

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

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

### PHA Policy

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

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

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

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

Other circumstances as determined by the PHA.

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

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

### PHA Policy

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

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

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

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

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, the PHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues. PHAs are not limited to a maximum number of 90-day extensions. PHAs must establish written policies regarding the types of circumstances that will allow a family to qualify for a financial hardship and when such deductions may be eligible for additional 90-day extensions. PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

#### **PHA Policy**

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

### **Child Care Expense Hardship Exemption**

[24 CFR 5.611(d) and Notice PIH 2023-27]

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

The PHA must develop a policy to define what constitutes a hardship, which includes the family's inability to pay rent. The PHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

#### **PHA Policy**

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

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

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

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

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

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

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

#### PHA Policy

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

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

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

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

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

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

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

#### **PHA Policy**

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

### ***6B-III.H. Permissive Deductions***

[24 CFR 5.611(b)(1)(i)]

The PHA may adopt additional permissive deductions from annual income if they establish a policy in the ACOP. Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose. If the PHA offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions [PH Occ GB, p. 128]. Permissive deductions may be used to incentivize or encourage self-sufficiency and economic mobility.

If the PHA chooses to adopt permissive deductions, the PHA is not eligible for an increase in Capital Fund and Operating Fund formula grants based on the application of those deductions. The PHA must establish a written policy for such deductions.

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

#### **PHA Policy**

The PHA has opted not to use permissive deductions.

## **PART IV: Calculating Rent**

### ***6B-IV.A. Overview of Income Based Rent Calculations***

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the tenant rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is

called the utility reimbursement, which may be paid to the family or directly to the utility company by the PHA.

### **TTP Formula**

[24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by the PHA

The PHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-IV.B.

### **Welfare Rent**

[24 CFR 5.628]

#### **PHA Policy**

Welfare rent does not apply in this locality.

### **Minimum Rent**

[24 CFR 5.630]

#### **PHA Policy**

The minimum rent for this locality is \$50.

### **Optional Changes to Income-Based Rents**

[24 CFR 960.253(c)(2) and PH Occ GB, pp. 131-134]

PHAs have been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory deductions. At the discretion of the PHA, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

The PHA's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to PHA designed income-based rents in the same manner as they are applied to the regulatory income-based rents.

The choices are limited only by the requirement that the method used not produce a TTP or tenant rent greater than the TTP or tenant rent produced under the regulatory formula.

#### **PHA Policy**

The PHA chooses not to adopt optional changes to income-based rents.



## **Ceiling Rents [24 CFR 960.253 (c)(2) and (d)]**

Ceiling rents are used to cap income-based rents. They are part of the income-based formula. If the calculated TTP exceeds the ceiling rent for the unit, the ceiling rent is used to calculate tenant rent (ceiling rent/TTP minus utility allowance). Increases in income do not affect the family since the rent is capped. The use of ceiling rents fosters upward mobility and income mixing.

Because of the mandatory use of flat rents, the primary function of ceiling rents now is to assist families who cannot switch back to flat rent between annual reexaminations and would otherwise be paying an income-based tenant rent that is higher than the flat rent.

Ceiling rents must be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities) [PH Occ GB, p. 135].

### **PHA Policy**

The PHA chooses not to use ceiling rents.

## **Utility Reimbursement [24 CFR 982.514(b); 982.514]**

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. HUD permits the PHA to pay the reimbursement to the family or directly to the utility provider.

### **PHA Policy**

The PHA will make utility reimbursements to the family.

The PHA may make all utility reimbursement payments to qualifying families on a monthly basis or may make quarterly payments when the monthly reimbursement amount is \$15.00 or less. Reimbursements must be made once per calendar-year quarter, either prospectively or retroactively, and must be prorated if the family leaves the program in advance of its next quarterly reimbursement. The PHA must also adopt hardship policies for families for whom receiving quarterly reimbursement would create a financial hardship. The PHA must issue reimbursements that exceed \$15.00 per month on a monthly basis.

### **PHA Policy**

The PHA will issue all utility reimbursements monthly.

## ***6B-IV.B. Financial Hardships Impacting Minimum Rent***

[24 CFR 5.630]

### **Overview**

If the PHA establishes a minimum rent greater than zero, the PHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the PHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

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

Financial hardship includes the following situations:

- (1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

**PHA Policy**

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following: (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

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

**PHA Policy**

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities.

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.

- (4) A death has occurred in the family.

**PHA Policy**

In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income).

- (5) The family has experienced other circumstances determined by the PHA.

**PHA Policy**

The PHA has not established any additional hardship criteria.

## **Implementation of Hardship Exemption**

### **Determination of Hardship**

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

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

**PHA Policy**

The PHA defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.



<b>Example: Impact of Minimum Rent Exemption</b>	
Assume the PHA has established a minimum rent of \$50.	
<b>Family Share - No Hardship</b>	<b>Family Share - With Hardship</b>
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$50 Minimum rent	\$50 Minimum rent
Minimum rent applies. TTP = \$50	Hardship exemption granted. TTP = \$15

**PHA Policy**

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family’s ability to pay the minimum rent.

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

**No Financial Hardship**

If the PHA determines there is no financial hardship, the PHA will reinstate the minimum rent and require the family to repay the amounts suspended.

For procedures pertaining to grievance hearing requests based upon the PHA’s denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

**PHA Policy**

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

**Temporary Hardship**

If the PHA determines that a qualifying financial hardship is temporary, the PHA must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family’s request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay the PHA the amounts suspended. HUD requires the PHA to offer a reasonable repayment agreement, on terms and conditions established by the PHA. The PHA also may determine that circumstances have changed and the hardship is now a long-term hardship.

For procedures pertaining to grievance hearing requests based upon the PHA’s denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

**PHA Policy**

The PHA will enter into a repayment agreement in accordance with the PHA's repayment agreement policy (see Chapter 16).

**Long-Term Hardship**

If the PHA determines that the financial hardship is long-term, the PHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

#### **PHA Policy**

The hardship period ends when any of the following circumstances apply:

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.
- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

### ***6B-IV.C. Utility Allowances***

[24 CFR 965, Subpart E]

#### **Overview**

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. When determining a family's income-based rent, the PHA must use the utility allowance applicable to the type of dwelling unit leased by the family.

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

#### **Reasonable Accommodation and Individual Relief**

On request from a family, PHAs must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability [24 CFR 8 and 100, PH Occ GB, p. 172].

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies related to reasonable accommodations.

Further, the PHA may grant requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, as the PHA deems appropriate. The family must request the higher allowance and provide the PHA with an explanation about the additional allowance required.

PHAs should develop criteria for granting individual relief, notify residents about the availability of individual relief, and notify participants about the availability of individual relief programs (sometimes referred to as “Medical Baseline discounts”) offered by the local utility company [Utility Allowance GB, p. 19; 24 CFR 965.508].

#### **PHA Policy**

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

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

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

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

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

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

Information on reasonable accommodation and individual relief for charges in excess of the utility allowance will be provided to all residents at move-in and with any notice of proposed allowances, schedule surcharges, and revisions. The PHA will also provide information on utility relief programs or medical discounts (sometimes referred to as “Medical Baseline discounts”) that may be available through local utility providers.

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

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

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

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

The PHA must review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to standards described in 24 CFR 965.505, must establish revised allowances.

The PHA must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based.

Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective. Such rate changes are not subject to the 60-day notice [24 CFR 965.507(b)].

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

#### **PHA Policy**

Between annual reviews of utility allowances, the PHA will only revise its utility allowances due to a rate change, when required to by the regulation.

### ***6B-IV.D. Prorated Rent for Mixed Eligibility Families***

[24 CFR 5.520]

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. Except for non-public housing over income families, the PHA must prorate the assistance provided to a mixed family. The PHA will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, the PHA must:

- (1) Subtract the TTP from the flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible.
- (2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy).
- (3) Multiply the member maximum subsidy by the number of eligible family members.
- (4) Subtract the subsidy calculated in the last step from the flat rent. This is the prorated TTP.
- (5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family.

#### **PHA Policy**

Revised public housing flat rents will be applied to a mixed family's rent calculation at the first annual reexamination after the revision is adopted.

- (6) When the mixed family's TTP is greater than the applicable flat rent, use the TTP as the prorated TTP. The prorated TTP minus the utility allowance is the prorated rent for the mixed family.

### ***6B-IV.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.

Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

Policies related to the reexamination of families paying flat rent are contained in Chapter 9, and policies related to the establishment and review of flat rents are contained in Chapter 16.

### **Family Choice in Rents [24 CFR 960.253(a) and (e)]**

With the exception of non-public housing over income families, once each year, the PHA must offer families the choice between a flat rent and an income-based rent. The family may not be offered this choice more than once a year. The PHA must document that flat rents were offered to families under the methods used to determine flat rents for the PHA.

#### **PHA Policy**

The annual PHA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination.

The PHA will require families to submit their choice of flat or income-based rent in writing and will maintain such requests in the tenant file as part of the admission or annual reexamination process.

The PHA must provide sufficient information for families to make an informed choice. This information must include the PHA's policy on switching from flat rent to income-based rent due to financial hardship and the dollar amount of the rent under each option. However, if the family chose the flat rent for the previous year the PHA is required to provide an income-based rent amount only in the year that a reexamination of income is conducted or if the family specifically requests it and submits updated income information.

### **Switching from Flat Rent to Income-Based Rent Due to Hardship**

[24 CFR 960.253(f)]

With the exception of non-public housing over-income families, a family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If the PHA determines that a financial hardship exists, the PHA must immediately allow the family to switch from flat rent to the income-based rent.

#### **PHA Policy**

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

Reasons for financial hardship include:

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items
- Such other situations determined by the PHA to be appropriate

#### **PHA Policy**

The PHA considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent [PH Occ GB, p. 137].

## **Flat Rents and Earned Income Disallowance [A&O FAQs]**

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

Under the EID original calculation method, a family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their exclusion period would have the exclusion period continue while paying flat rent as long as the employment that is the subject of the exclusion continues. A family paying flat rent could therefore see a family member's exclusion period expire while the family is paying flat rent.

Under the EID revised calculation method, a family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their exclusion period would have the exclusion period continue while paying flat rent regardless whether the employment that is the subject of the exclusion continues. A family paying flat rent could therefore see a family member's exclusion period expire while the family is paying flat rent.

## **EXHIBIT(S)**

### ***EXHIBIT 6-1: Annual Income Full Definition***

#### **24 CFR 5.609**

(a) Annual income includes, with respect to the family:

(1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

*(b) Annual income does not include the following:*

(1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):

(A) Distributions of the principal or corpus of the trust; and

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under the 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(9)

(i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and

(ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from— (

- 1) The Federal government;
- 2) A State, Tribe, or local government;
- 3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);
- 4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- 5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

- 1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;
- 2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section); (
- 3) Gifts, including gifts from family or friends; or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii) of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

- (1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;
- (2) Expressly to assist a student with the costs of higher education; or
- (3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:



(1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

(2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

(i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, “baby bond” accounts created, authorized, or funded by Federal, State, or local government.

(11) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(12)

(i) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.

(13) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.

(14) Earned income of dependent fulltime students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

(16) Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

(18) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit.

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

(i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such

accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; and

(ii) Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

## ***EXHIBIT 6-2: TREATMENT OF FAMILY ASSETS***

**24 CFR 5.603(b) Net Family Assets** (1) Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

(2) In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all nonnecessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue

Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; (iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located; (v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability; (vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any “baby bond” account created, authorized, or funded by Federal, State, or local government. (vii) Interests in Indian trust land; (viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982; (ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982; (x) Family Self-Sufficiency Accounts; and (xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(4) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

## ***EXHIBIT 6-3: THE EFFECT OF WELFARE BENEFIT REDUCTION***

### **24 CFR 5.615**

#### **Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

**(a) Applicability.** This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

**(b) Definitions.** The following definitions apply for purposes of this section:

*Covered families.* Families who receive welfare assistance or other public assistance benefits (“welfare benefits”) from a State or other public agency (“welfare agency”) under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603.

*Imputed welfare income.* The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefit reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) “Specified welfare benefit reduction” does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

**(c) Imputed welfare income.**

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

*(d) Review of PHA decision.*

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

*(e) PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction

# **Chapter 7A: Verification For PHA Actions Effective Prior to the HOTMA Compliance Date**

[24 CFR 960.259, 24 CFR 5.230, Notice PIH 2010-19]

## **Introduction**

This chapter describes the approach to verifications of household information prior to the implementation of the Housing Opportunity through Modernization Act (HOTMA). Verifications for PHA actions effective on or after the HOTMA Compliance Date will be conducted in accordance with Chapter 7B. The HOTMA compliance date will be determined following HUD guidance regarding the timing of the necessary HUD software updates. HAWC will notify all program participants of the HOTMA compliance date once it is determined.

HAWC 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. HAWC must not pass on the cost of verification to the family.

HAWC will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary HAWC policies.

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies established by the HAWC.

## **PART I: General Verification Requirements**

### ***7A-I.A. Family Consent to Release of Information***

[24 CFR 960.259, 24 CFR 5.230]

The family must supply any information that HAWC or HUD determines is necessary to the administration of the program and must consent to HAWC verification of that information [24 CFR 960.259(a)(1)].

#### **Consent Forms**

It is required that all adult applicants and tenants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and HAWC may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security

Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

## **Penalties for Failing to Consent**

[24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, HAWC will deny admission to applicants and terminate the lease of tenants. The family may request a hearing in accordance with the HAWC's grievance procedures.

### 7-I.B. Overview of Verification Requirements

## **HUD's Verification Hierarchy**

[Notice PIH 2018-18]

HUD authorizes HAWC to use six methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires HAWC to use the most reliable form of verification that is available and to document the reasons when HAWC uses a lesser form of verification.

In order of priority, the forms of verification that the PHA will use are:

1. Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
2. Up-front Income Verification (UIV) using a non-HUD system
3. Written Third Party Verification (may be provided by applicant or resident)
4. Written Third-party Verification Form
5. Oral Third-party Verification
6. Self-Certification

### **PHA Policy**

For updated income verification hierarchy policies, see the MTW Plan.

## **Requirements for Acceptable Documents**

### **PHA Policy**

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 days of the date they are provided to the HAWC. The documents must not be damaged, altered or in any way illegible.

Print-outs from web pages are considered original documents.

HAWC staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

Any family self-certifications must be made in a format acceptable to the HAWC and must be signed in the presence of a HAWC representative or HAWC notary public.



## **File Documentation**

HAWC must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that HAWC has followed all of the verification policies set forth in this ACOP. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

### **PHA Policy**

HAWC will document, in the family file, the following:

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income
- Other factors influencing the adjusted income or income-based rent determination

When HAWC is unable to obtain third-party verification, HAWC will document in the family file the reason that third-party verification was not available [24 CFR 960.259(c)(1); Notice PIH 2018-18].

## ***7A-I.B. Up-front Income Verification (UIV)***

Up-front income verification (UIV) refers to HAWC's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to HAWC.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until HAWC has independently verified the UIV information and the family has been granted the opportunity to contest any adverse findings through HAWC's informal review/hearing processes. (For more on UIV and income projection, see section 6-I.C.)

## **Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)**

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for resident families. HUD requires HAWC to use the EIV system in its entirety. The following policies apply to the use of HUD's EIV system.

## **EIV Income Reports**

The data shown on income reports is updated quarterly. Data may be between three and six months old at the time reports are generated.

### **PHA Policy**

HAWC will obtain income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6.I.C. Income reports may also be used to meet the regulatory requirement for third party verification, as

described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6.I.C. and in this chapter.

Income reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

Income reports will be retained in resident files with the applicable annual or interim reexamination documents.

When HAWC determines through income reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

### **EIV Discrepancy Reports**

The EIV discrepancy report is a tool for identifying families that may have concealed or underreported income. Data in the discrepancy report represents income for past reporting periods and may be between 6 and 30 months old at the time reports are generated.

Families that have not concealed or underreported income may appear on the discrepancy report in some circumstances, such as loss of a job or addition of new family members.

Income discrepancies may be identified through use of the EIV "Income Discrepancy Report" or by review of the discrepancy tab for the individual family.

#### **PHA Policy**

HAWC will generate the Income Discrepancy Report at least once every 6 months.

When HAWC determines that a resident appearing on the Income Discrepancy Report has not concealed or underreported income, the resident's name will be placed on a list of "false positive" reviews. To avoid multiple reviews in this situation, residents appearing on this list will be eliminated from discrepancy processing until a subsequent interim or annual reexamination has been completed.

HAWC will review the EIV discrepancy tab during processing of annual and interim reexaminations.

When it appears that a family may have concealed or underreported income, HAWC will request independent written third-party verification of the income in question.

When HAWC determines through file review and independent third-party verification that a family has concealed or underreported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

### **EIV Identity Verification**

The EIV system verifies resident identities against Social Security Administration (SSA) records. These records are compared to Public and Indian Housing Information Center (PIC) data for a match on social security number, name, and date of birth.

HAWC is required to use EIV's Identity Verification Report on a monthly basis to improve the availability of income information in EIV [Notice PIH 2018-18].

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

#### **PHA Policy**

HAWC will identify residents whose identity verification has failed by reviewing EIV's Identity Verification Report on a monthly basis. HAWC will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the tenant. When HAWC determines that discrepancies exist as a result of HAWC errors, such as spelling errors or incorrect birth dates, it will correct the errors promptly.

### **Upfront Income Verification Using Non-HUD Systems (Optional)**

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

#### **PHA Policy**

HAWC will use the following UIV resources during the admission and reexamination process:

- HUD's EIV system
- State of Oregon Department of Human Services database(s)
- State of Oregon Employment Department database(s)
- State of Oregon Child Support Enforcement Division database(s)

### ***7A-I.C. Third-Party Written and Oral Verification***

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to HAWC by the family. If written third-party verification is not available, the HAWC must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

### **Written Third-Party Verification**

[Notice PIH 2018-18]

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

HAWC is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

HAWC may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

PHA Policy

Third-party documents provided by the family must be dated within 60 days of HAWC request date.

If HAWC determines that third-party documents provided by the family are not acceptable, HAWC will explain the reason to the family and request additional documentation.

As verification of earned income, HAWC will request pay stubs covering the 60-day period prior to HAWC's request.

### **Written Third-Party Verification Form**

When upfront verification is not available and the family is unable to provide written third-party documents, HAWC must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

A written third-party verification form is mandatory when there is an unreported source of income or a substantial difference in reported income (\$2400 annually or more) and there is no UIV or tenant-provided documentation to support the income discrepancy.

HAWC may mail, fax, or e-mail third-party written verification form requests to third-party sources.

PHA Policy

HAWC will send third-party verification forms directly to the third party.

Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by HAWC.

### **Oral Third-Party Verification**

[Notice PIH 2018-18]

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

PHAs should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

PHA Policy

In collecting third-party oral verification, HAWC staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification HAWC will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

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

[Notice PIH 2018-18]

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

#### **PHA Policy**

If the family cannot provide original documents, HAWC will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

### **Primary Documents**

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

### **Imputed Assets**

HAWC may accept a self-certification from the family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

#### **PHA Policy**

HAWC will accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

#### **Value of Assets and Asset Income [4 CFR 960-259]**

For families with net assets totaling \$5,000 or less, HAWC may accept the family's declaration of asset value and anticipated asset income. However, HAWC is required to obtain third-party verification of all assets regardless of the amount during the intake process, whenever a family member is added, and at least every three years thereafter.

### **7A-I.D. Self-Certification**

Self-certification, or "tenant declaration," is used as a last resort when HAWC is unable to obtain third-party verification.

When HAWC relies on a tenant declaration for verification of income, assets, or expenses, the family's file must be documented to explain why third-party verification was not available.

### PHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to HAWC.

HAWC may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to HAWC and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a HAWC representative or HAWC notary public.

## **PART II: Verifying Family Information**

### ***7A-II.A. Verification of Legal Identity***

#### PHA Policy

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

#### Verification of Legal Identity for Adults

- Current, valid Photo Identification issued by Federal, State, or Local Government, including, but not limited to current, valid state issued driver's license or Department of Motor Vehicle identification card. The PHA will accept both standard and Real ID Act compliant cards issued by the Department of Motor Vehicles, provided that the cards are valid and unexpired.
- U.S. passport

#### Verification of Legal Identity for Children

- Certificate of birth
- Adoption papers
- Custody agreement

If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at HAWC'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 HAWC and be signed in the presence of a HAWC representative or HAWC notary public.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where HAWC has reason to doubt the identity of a person representing themselves to be a tenant or a member of a tenant family.

## **7A-II.B. Social Security Numbers**

[24 CFR 5.216 and Notice PIH 2018-24]

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include, existing residents who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

HAWC must accept the following documentation as acceptable evidence of the social security number:

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

HAWC may only reject documentation of an SSN provided by an applicant or resident if the document is not an original document, if the original document has been altered, mutilated, or is not legible, or if the document appears to be forged.

### **PHA Policy**

HAWC will explain to the applicant or resident the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the PHA within 90 days.

Applicants will not be admitted to the Public Housing program until acceptable documentation is provided.

When the resident requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the resident must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. HAWC may not add the new household member until such documentation is provided.

When a resident requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the resident must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if HAWC determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control. During the period HAWC is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

### **PHA Policy**

HAWC will grant one additional 90-day extension if needed for reasons beyond the resident's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified at least once during continuously-assisted occupancy.

### **PHA Policy**

HAWC will verify each disclosed SSN by:

- Obtaining documentation from applicants and residents that is acceptable as evidence of social security numbers
- Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

Once the individual's verification status is classified as "verified," HAWC should remove and destroy copies of documentation accepted as evidence of social security numbers by no later than the next reexamination.

#### **PHA Policy**

Once an individual's status is classified as "verified" in HUD's EIV system, HAWC will remove and destroy copies of documentation accepted as evidence of social security numbers by no later than the next reexamination.

### ***7A-II.C. Documentation of Age***

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

#### **PHA Policy**

If an official record of birth or evidence of social security retirement benefits cannot be provided, HAWC will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified at least once during continuously-assisted occupancy.

### ***7A-II.D. Family Relationships***

Applicants and tenants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

#### **PHA Policy**

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

### **Marriage**

#### **PHA Policy**

Certification by the head of household is normally sufficient verification. If HAWC has reasonable doubts about a marital relationship, HAWC will require the family to document the marriage.

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). Note that common law "marriage" is not valid in Oregon. However, if a couple is from a state that acknowledges



common law marriages, and the couple meets the requirements of common law marriage of that state, then the state of Oregon will acknowledge the marriage of that state as valid in Oregon. The couple must provide documentation to support their meeting the requirements of a common law marriage in their state of origin.

## **Separation or Divorce**

### **PHA Policy**

Certification by the head of household is normally sufficient verification. If HAWC has reasonable doubts about a separation or divorce, HAWC will require the family to document the divorce, or separation.

- A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.
- A copy of a court-ordered maintenance or other court record is required to document a separation.
- If no court document is available, documentation from a community-based agency will be accepted.

## **Absence of Adult Member**

### **PHA Policy**

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

Refer to section 3-I.L. (Absent Family Members) for a complete description of how absent members of the family are handled.

## **Foster Children and Foster Adults**

### **PHA Policy**

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

## ***7A-II.E. Verification of Student Status***

### **PHA Policy**

HAWC 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.

## **7A-II.F. Documentation of Disability**

HAWC must verify the existence of a disability in order to allow certain income disallowances and deductions from income. HAWC is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. HAWC may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If HAWC receives a verification document that provides such information, HAWC will not place this information in the tenant file. Under no circumstances will HAWC request a resident's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' Web site at [www.os.dhhs.gov](http://www.os.dhhs.gov).

HAWC may make the following inquiries, provided it makes them of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

Inquiry into an applicant's ability to meet the requirements of ownership or tenancy

- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiry about whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiry about whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

### **Family Members Receiving SSA Disability Benefits**

Verification of receipt of disability benefits from the Social Security Administration (SSA) is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions [VG, p. 23].

#### **PHA Policy**

For family members claiming disability who receive disability payments from the SSA, HAWC 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, HAWC will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If a family member is unable to provide the document, HAWC will ask the family to obtain a benefit verification letter either by calling SSA at 1-800-772-1213 or by requesting one from [www.ssa.gov](http://www.ssa.gov). Once the family receives the benefit verification letter, it will be required to provide the letter to HAWC.

### **Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

#### **PHA Policy**

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD

definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

## ***7A-II.G. Citizenship or Eligible Immigration Status***

[24 CFR 5.508]

### **Overview**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. See the Eligibility chapter for detailed discussion of eligibility requirements. This chapter (7) discusses HUD and HAWC verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy [24 CFR 5.508(g)(5)]

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

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The PHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

#### **PHA Policy**

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

### **Eligible Immigrants**

#### **Documents Required**

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

#### **PHA Verification**

[HCV GB, pp 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this ACOP. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, HAWC must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

HAWC will follow all USCIS protocols for verification of eligible immigration status.

### ***7A-II.H. Verification of Preference Status***

HAWC must verify any preferences claimed by an applicant.

#### **PHA Policy**

HAWC will verify preferences claimed by applicants as detailed in Section 4-III.B.

## **PART III: Verifying Income and Assets**

Chapter 6, Part I of this ACOP describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides HAWC policies that supplement the general verification procedures specified in Part I of this chapter.

### ***7A-III.A. Earned Income***

#### **Tips**

#### **PHA Policy**

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

### ***7A-III.B. Business and Self Employment Income***

#### **PHA Policy**

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

- An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.
- All schedules completed for filing federal and local taxes in the preceding year.
- If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

HAWC will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the PHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, HAWC will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months HAWC will require the family to provide documentation of income and expenses for this period and use that information to project income.

### ***7A-III.C. Periodic Payments and Payments In Lieu Of Earnings***

#### **Social Security/SSI Benefits**

##### **PHA Policy**

To verify the SS/SSI benefits of applicants, HAWC will request a current SSA benefit verification letter from each family member who receives social security benefits. If a family member is unable to provide the document, HAWC will help the applicant request a benefit verification letter from SSA's Web site at [www.socialsecurity.gov](http://www.socialsecurity.gov) or ask the family to request one by calling SSA at 1-800-772-1213. Once the family has received the original benefit verification letter, it will be required to provide the letter to HAWC.

To verify the SS/SSI benefits of residents, HAWC will obtain information about social security/SSI benefits through HUD's EIV system, and confirm with the resident(s) that the current listed benefit amount is correct. If the resident disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, HAWC will request a current SSA benefit verification letter from each family member that receives social security benefits. If a family member is unable to provide the document, HAWC will help the resident request a benefit verification letter from SSA's Web site at [www.socialsecurity.gov](http://www.socialsecurity.gov) or ask the family to request one by calling SSA at 1-800-772-1213. Once the family has received the benefit verification letter, it will be required to provide the letter to HAWC.

### ***7A-III.D. Alimony or Child Support***

##### **PHA Policy**

Verification will be sought in the following order.

- Third-party verification form from the state or local child support enforcement agency
- Copy of the receipts and/or payment stubs for the 60 days prior to HAWC request
- Third-party verification form from the person paying the support
- Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received

### ***7A-III.E. Assets and Income From Assets***

#### **Assets Disposed of for Less than Fair Market Value**

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. HAWC needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

### **PHA Policy**

Under MTW, if total household assets are less than \$100,000, then families may self-certify, and assets do not need to be verified by the PHA; and income from those assets will not be counted in family income for rent calculation purposes.

HAWC will verify the value of assets disposed of only if:

- HAWC does not already have a reasonable estimation of its value from previously collected information, or
- The amount reported by the family in the certification appears obviously in error.

#### **EXAMPLE**

Example 1: An elderly resident reported a \$10,000 certificate of deposit at the last annual reexamination and HAWC verified this amount. Now the person reports that she has given this \$10,000 to her son. HAWC has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately \$5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, HAWC will verify the value of this asset.

### ***7A-III.F. Net Income from Rental Property***

#### **PHA Policy**

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, HAWC 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.

### ***7A-III.G. Retirement Accounts***

#### **PHA Policy**

HAWC will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

The type of original document that will be accepted depends upon the family member's retirement status.

Before retirement, HAWC will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, HAWC 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, HAWC will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

### ***7A-III.H. Income from Excluded Sources***

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HAWC must obtain verification for income exclusions only if, without verification, HAWC 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, HAWC will confirm that HAWC records verify the child's age but will not require third-party verification of the amount earned. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

#### **PHA Policy**

HAWC will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family's rent (as is the case with the earned income disallowance). In all other cases, HAWC will report the amount to be excluded as indicated on documents provided by the family.

### ***7A-III.I. Zero Annual Income Status***

#### **PHA Policy**

There is no minimum income requirement for participation in the HAWC's rental assistance program(s).

HAWC will check EIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by families claiming to have zero annual income.

Families, and/or individual household members, who report zero income, are required to report any changes in income status within 10 business days of the receipt of the income. If the entire household was at zero income, HAWC will then conduct an interim review for the family, regardless of the HAWC's Interim Reexamination Policy for households not reporting zero income.

Families that report zero income (or any income lower than appears necessary to maintain the family) will be required to:

- Attend a pre-scheduled Zero Income Review appointment at HAWC office on a monthly basis;
- Provide a completed questionnaire detailing their means of basic subsistence, such as food, utilities, transportation, etc.; and
- Provide copies of all utility bills associated with the family's rental unit



Failure to attend the pre-scheduled appointment or provide the required paperwork or copies of utility bills may result in termination of rental assistance in accordance with this plan.

If the family's likely expenses exceed their known income, HAWC will make inquiry of the head of household as to the nature of the family's accessible resources. HAWC may also conduct a credit check for the household, to determine whether the reported income and family composition is consistent with the household's credit relationships and expenditures.

### **Full Time Students with Financial Aid as Sole Source of Income**

While it is recognized that students subsisting on financial aid do have income, the PHA may require full time students who report that their sole income source is financial aid (i.e. grants, loans, work study, etc.) to submit financial aid verification and attend Income Review appointments on a quarterly basis.

## **PART IV: Verifying Mandatory Deductions**

### ***7A-IV.A. Dependent and Elderly/Disabled Household Deductions***

The dependent and elderly/disabled family deductions require only that HAWC verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

#### **Dependent Deduction**

See Chapter 6 (6-II.B.) for a full discussion of this deduction. HAWC will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

#### **Elderly/Disabled Family Deduction**

See the Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. HAWC will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

### ***7A-IV.B. Medical Expense Deduction***

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

#### **Amount of Expense**

##### **[PHA Policy](#)**



Families requesting an income deduction for medical expenses will be required to submit a certification of expenses documenting the type and amount of the family's out-of-pocket portion of the expense.

The PHA will consider eligible medical expenses paid by the household during the twelve-month period prior to the Notice of Annual Review of Eligibility or application date. If the household experiences an increase or decrease in medical expenses between eligibility reviews, the PHA will not conduct an interim review. Items or services that have not yet been paid for, that are covered by insurance, or that someone else paid for, are not eligible.

MTW participants may self-certify medical expenses if they total less than \$5,000 per year.

When necessary medical expenses will be verified through:

- Written third-party documents provided by the family, such as pharmacy printouts or receipts.
- The PHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The PHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
- Written third-party verification forms, if the family is unable to provide acceptable documentation.
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, HAWC must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

### **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62 or a person with disabilities. HAWC will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter, and as described in Chapter 7 (7-IV.A) of this plan.

### **Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for HAWC's policy on what counts as a medical expense.

### **Unreimbursed Expenses**

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

#### **PHA Policy**

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

## **Expenses Incurred in Past Years**

### **PHA Policy**

When anticipated costs are related to on-going payment of medical bills incurred in past years, HAWC 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

## ***7A-IV.C. Disability Assistance Expenses***

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

## **Amount of Expense**

### **Attendant Care**

#### **PHA Policy**

HAWC will accept written third-party documents provided by the family.

If family-provided documents are not available, HAWC will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

- Written third-party documents provided by the family, such as receipts or cancelled checks.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

### **Auxiliary Apparatus**

#### **PHA Policy**

Expenses for auxiliary apparatus will be verified through:

- Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, HAWC must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).

- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

### **Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. HAWC will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

### **Family Member(s) Permitted to Work**

HAWC must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

#### **PHA Policy**

HAWC will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

### **Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

#### **PHA Policy**

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

### ***7A-IV.D. Child Care Expenses***

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, HAWC 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. HAWC will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

## **Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

### **PHA Policy**

The 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**

HAWC must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

### **PHA Policy**

#### **Information to be Gathered**

HAWC 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 HAWC will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases HAWC will request family-provided verification from the agency of the member's job seeking efforts to date and require the family to submit to the HAWC any reports provided to the other agency.

In the event third-party verification is not available, HAWC will provide the family with a form on which the family member must record job search efforts. HAWC will review this information at each subsequent reexamination for which this deduction is claimed.

#### **Furthering Education**

HAWC will request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

#### **Gainful Employment**

HAWC will seek third-party verification of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

## **Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

### **PHA Policy**

HAWC will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

HAWC will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

HAWC will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

## **Reasonableness of Expenses**

Only reasonable child care costs can be deducted.

### **PHA Policy**

The actual costs the family incurs will be compared with the HAWC'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, HAWC will request additional documentation, as required, to support a determination that the higher cost is appropriate.

## **EXHIBIT(S)**

### ***Exhibit 7A-1: Summary of Documentation Requirements for Noncitizens***

[HCV GB, pp. 5-9 and 5-10]

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to HAWC.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

### **Elderly Noncitizens**

A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

### **All Other Noncitizens**

Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
  - "Admitted as a Refugee Pursuant to Section 207"
  - "Section 208" or "Asylum"
  - "Section 243(h)" or "Deportation stayed by Attorney General"
  - "Paroled Pursuant to Section 221 (d)(5) of the USCIS"

- Form I-94 Arrival-Departure Record with no annotation accompanied by:
  - A final court decision granting asylum (but only if no appeal is taken);
  - A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
  - A court decision granting withholding of deportation; or
  - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).
  
- Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.
  
- Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.
  
- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or
  
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the Federal Register

# Chapter 7B: Verification For PHA Actions Effective On or After the HOTMA Compliance Date

[24 CFR 960.259, 24 CFR 5.230, Notice PIH 2023-27]

## **Introduction**

This chapter describes the approach to verifications of household information on or after the implementation of the Housing Opportunity through Modernization Act (HOTMA). Verifications for PHA actions effective prior to the HOTMA compliance date will be conducted in accordance with Chapter 7A. The HOTMA compliance date will be determined following HUD guidance regarding the timing of the necessary HUD software updates. HAWC will notify all program participants of the HOTMA compliance date once it is determined.

The PHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain written authorization from the family in order to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The PHA must not pass on the cost of verification to the family. The PHA must follow the verification guidance provided by HUD in Notice PIH 2023-27 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

Part I describes the general verification process.

Part II provides more detailed requirements related to family information.

Part III provides information on income and assets, and

Part IV covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies established by the PHA.

## **PART I: General Verification Requirements**

### ***7B-1.A. Family Consent to Release of Information***

[24 CFR 960.259; 24 CFR 5.230; and Notice PIH 2023-27]

#### **Consent Forms**

The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR 960.259(a)(1)]. All adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. While PHAs must use form HUD-9886, this form does not release all the information necessary to the administration of the program. The PHA must also develop its own release forms to cover all other necessary information.

#### **Form HUD-9886**

[24 CFR 5.230(b)(1), (b)(2), (c)(4), and (c)(5); Notice PIH 2023-27]

All adult applicants and tenants must sign form HUD-9886, Authorization for Release of Information. All adult family members (and the head and spouse/cohead regardless of age) are required to sign the Form HUD-9886 at admission. Participants, prior to January 1, 2024, signed and submitted Form HUD-9886 at each annual reexamination. HOTMA eliminated this requirement and instead required that the

Form HUD-9886 be signed only once. On or after January 1, 2024 (regardless of the PHA's HOTMA compliance date), current program participants must sign and submit a new Form HUD-9886 at their next interim or annual reexamination. This form will only be signed once. Another Form HUD-9886 will not be submitted to the PHA except under the following circumstances:

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

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

#### **PHA Policy**

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

The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the PHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA).

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

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

### **Penalties for Failing to Consent [24 CFR 5.232]**

If any family member who is required to sign a consent form fails to do so, the PHA must deny admission to applicants and terminate the lease of tenants [24 CFR 5.232(a)]. The family may request a hearing in accordance with the PHA's grievance procedures.

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

#### **PHA Policy**

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

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

### ***7B-I.B. Use of Other Program's Income Determinations***

[24 CFR 5.609(c)(3) and Notice PIH 2023-27]

PHAs may, but are not required to, determine a family's annual income, including income from assets, prior to the application of any deductions, based on income determinations made within the previous



12-month period, using income determinations from means-tested federal public assistance programs. PHAs are not required to accept or use determinations of income from other federal means-tested forms of assistance. If the PHA adopts a policy to accept this type of verification, the PHA must establish in policy when they will accept Safe Harbor income determinations and from which programs. PHAs must also create policies that outline the course of action when families present multiple verifications from the same or different acceptable Safe Harbor programs. Means-tested federal public assistance programs include:

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

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

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

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

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

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

The amounts of unreimbursed reasonable attendant care expenses and child-care expenses deducted from a family's annual income, except for when a family is approved for a child-care expense hardship

exemption, must still be capped by the amount earned by any family member who is enabled to work as a result of the expense. PHAs are therefore required to obtain third-party verification of the applicable employment income and cap the respective expense deductions accordingly.

#### **PHA Policy**

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

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

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

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

In order to be acceptable, the income determination must:

- Be dated within 12 months of the dates listed above;
- State the family size;
- Be for the entire family (i.e., the family members listed in the documentation must match the family's composition in the assisted unit, except for household members); and
- Must state the amount of the family's annual income.

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

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

When the PHA uses a Safe Harbor income determination from another program, and the family's income subsequently changes, the family is required to report the change to the PHA.

Depending on when the change occurred, the change may or may not impact the PHA's calculation of the family's total annual income. Changes that occur between the time the PHA receives the Safe Harbor documentation and the effective date of the family's annual reexam will not be considered. If the family has a change in income that occurs after the annual reexam effective date, the PHA will conduct an interim reexam if the change meets the requirements for performing an interim reexamination as outlined in Chapter 9. In this case, the PHA will use third-party verification to verify the change.

### ***7B-I.C. Streamlined Income Determinations***

[24 CFR 960.257(c); Notice PIH 2023-27]

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years, the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or other inflationary

adjustment factor. Streamlining policies are optional. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources.

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

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

#### **PHA Policy**

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

If 90 percent or more of a family's unadjusted income is from fixed income sources:

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

The family will be required to sign a self-certification stating that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year.

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

Third-party verification of non-fixed income will be obtained annually regardless of the percentage of family income received from fixed sources.

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

When less than 90 percent of a family's unadjusted income consists of fixed income:

The PHA will apply a COLA to each of the family's sources of fixed income.

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

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

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

Of all deductions and allowances from annual income;

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

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

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

### ***7B-1.D. Verification Hierarchy***

[Notice PIH 2023-27]

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

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

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general, HUD requires the PHA to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.

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

In order of priority, the hierarchy is:

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

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

## **File Documentation**

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA has followed all of the verification policies set forth in this ACOP. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

### ***7B-I.E. Level 5 and 6 Verification: Up-Front Income Verification (UIV)***

Up-front income verification (UIV) refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits for a number of individuals. PHAs may use UIV sources before or during a family reexamination.

UIV will be used to the extent that these systems are available to the PHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the PHA has independently verified the UIV information and the family has been granted the opportunity to contest any adverse findings through the PHA's informal review/hearing processes.

## **Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System**

PHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during annual and streamlined reexaminations of family composition and income in accordance with 24 CFR 5.236 and Notice PIH 2023-27.

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

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

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

### **EIV Income and IVT Reports**

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

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

The EIV Income and IVT Reports are also not available for program applicants at admission.

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

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

#### **PHA Policy**

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

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

Income and IVT reports will be retained in resident files with the applicable annual documents or interim reexamination documents (if applicable) for the duration of tenancy.

When the PHA determines through EIV reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

### **New Hires Report**

[Notice PIH 2023-27]

The New Hires Report identifies participant families who have new employment within the last six months. The report is updated monthly.

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

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

#### **PHA Policy**

In accordance with PHA policies in Chapter 9, the PHA does not process interim reexaminations for families who have increases in earned income. Except for instances in which the PHA uses Safe Harbor income determinations to determine a family's annual income, the PHA will only review the New Hires Report at annual reexamination.

## **No Income Reported by HHS or SSA Report**

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

### **PHA Policy**

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

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

When the PHA determines through this report and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

## **EIV Identity Verification Report**

The EIV system verifies resident identities against Social Security Administration (SSA) records. These records are compared to HUD data for a match on social security number, name, and date of birth. PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2023-27].

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

### **PHA Policy**

The PHA will identify residents whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

The PHA will attempt to resolve discrepancies by obtaining appropriate documentation from the tenant. When the PHA determines that discrepancies exist as a result of PHA errors, such as spelling errors or incorrect birth dates, it will correct the errors promptly.

## **Deceased Tenants Reports [Notice PIH 2012-4 and Notice PIH 2023-27]**

The Deceased Tenant Report identifies residents that have been reported by the SSA as deceased. The PHA is required to review the report at least quarterly.

### **PHA Policy**

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

When the Deceased Tenants Report identifies an individual as being deceased, PHAs must immediately send a letter to the head of household or emergency contact person (if the head of household is deceased and there is no other adult household member) to confirm the death of the listed household member. The PHA must conduct a home visit to determine if anyone is residing in the unit. PHAs are required to list the move-out date for the family as of the date on which the family or designee of the deceased tenant's estate returned the keys and signed a vacate notice; the date the public housing lease was terminated; or the date the PHA legally regained possession of the unit, whichever occurs first.



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

## **Other EIV Reports**

[Notice PIH 2023-27]

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

## **Upfront Income Verification Using Non-HUD Systems**

HUD encourages PHAs to utilize other upfront verification sources such as the Work Number and web-based state benefits systems.

### **PHA Policy**

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

- HUD's EIV system
- State of Oregon databases, including, but not limited to employment, child support, entitlement benefits (TANF, SNAP, etc.)
- Private income verification systems (i.e. The Work Number), or any other similar data collection Web sites.

## **7B-I.F. Level 4 Verification**

[Notice PIH 2023-27]

HUD identifies two types of Level 4 verification: written-third party verification from the source and EIV + self-certification.

### **EIV + Self-Certification**

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

### **PHA Policy**

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

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

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

## **Written Third-Party Verification from the Source**

Written, third-party verification from the source is also known as “tenant-provided verification.” In order to qualify as written-third party verification from the source, the documents must be original or authentic and (generally) dated within 120 days of the date received by the PHA. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation. Documents may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer’s transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

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

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

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

### **PHA Policy**

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

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

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

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

The PHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible. If the PHA determines that third-party documents provided by the family are not acceptable, the PHA will explain the reason to the family and request additional documentation from the family or will use a lower form of verification such as a written third-party verification form.

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

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

## ***7B-I.G. Level 3 Verification: Written, Third Party Form***

[Notice PIH 2023-27]

This type of verification is a form developed by the PHA and used uniformly for all families when needed to collect information from a third-party source. This is known as “traditional third-party



verification.” PHAs send a PHA-developed form directly to the third-party source by mail, fax, or email and the source completes the form by hand (in writing or typeset).

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

#### **PHA Policy**

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

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

### ***7B-I.H. Level 2: Oral Third-Party Verification***

[Notice PIH 2023-27]

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

PHAs must document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

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

#### **PHA Policy**

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

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

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

[Notice PIH 2023-27]

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family’s total tenant payment.

#### **PHA Policy**

If the family cannot provide original documents, the PHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

### **Primary Documents**

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

### ***7B-I.I. Level 1: Self-Certification***

[Notice PIH 2023-27]

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

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

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

When the PHA was required to obtain third-party verification but instead relies on self-certification, the family’s file must be documented to explain why third-party verification was not available. HUD does not require that a self-certification be notarized; however, HUD recommends including language on any self-certification to ensure the certifier understands the consequences of knowingly providing false information.

**PHA Policy**

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the PHA.

The PHA may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified.

All self-certifications will include the following language:

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

**Part II: Verification of Legal Identity**

***7B-II.A. Verification of Legal Identity***

**PHA Policy**

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

<b>Verification of Legal Identity for Adults</b>	<b>Verification of Legal Identity for Children</b>
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver’s license or Department of Motor Vehicle identification card U.S. military discharge (DD 214) Current U.S. passport	Certificate of birth Adoption papers Custody agreement Health and Human Services ID Certified school records

Current government employer identification card with picture	
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The PHA will accept both standard and Real ID Act compliant cards issued by the Department of Motor Vehicles, provided that they are valid and unexpired.

If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the PHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the PHA and be signed by the family member whose information or status is being verified.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the PHA has reason to doubt the identity of a person representing themselves to be a tenant or a member of a tenant family.

### **7B-II.B. Social Security Numbers**

[24 CFR 5.216 and Notice PIH 2023-27]

The family must provide documentation of a valid Social Security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status.

Exemptions also include, existing residents who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

The PHA must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

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

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

#### **PHA Policy**

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

The PHA may only reject documentation of an SSN provided by an applicant or resident if the document is not an original document, if the original document has been altered, mutilated, is illegible, or if the document appears to be forged.

### PHA Policy

The PHA will explain to the applicant or resident the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the PHA within 90 days.

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of program admission, an otherwise eligible family may be admitted and must provide documentation of the child's SSN within 90 days. A 90-day extension will be granted if the PHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control.

### PHA Policy

The PHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a resident requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the resident must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The PHA may not add the new household member until such documentation is provided.

When a resident requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the resident must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the PHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

### PHA Policy

The PHA will grant one additional 90-day extension if needed for reasons beyond the resident's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified at least once during continuously assisted occupancy.

### PHA Policy

The PHA will verify each disclosed SSN by:

Obtaining documentation from applicants and residents that is acceptable as evidence of social security numbers

Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

Once the individual's verification status is classified as "verified," the PHA may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

### PHA Policy

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

## **7B-II.C. Documentation of Age**

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

### **PHA Policy**

If an official record of birth or evidence of social security retirement benefits cannot be provided, the PHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified at least once during continuously assisted occupancy.

## **7B-II.D. Family Relationships**

Applicants and tenants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

### **PHA Policy**

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

## **Marriage**

### **PHA Policy**

Certification by the head of household is normally sufficient verification. If the PHA has reasonable doubts about a marital relationship, the PHA will require the family to document the marriage with a marriage certificate or other documentation to verify that the couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

## **Separation or Divorce**

### **PHA Policy**

Certification by the head of household is normally sufficient verification. If the PHA has reasonable doubts about a divorce or separation, the PHA will require the family to provide documentation of the divorce or separation with a certified copy of a divorce decree, signed by a court officer; a copy of a court-ordered maintenance or other court record; or other documentation that shows a couple is divorced or separated.

If no court document is available, documentation from a community-based agency will be accepted.

## **Absence of Adult Member**

### **PHA Policy**

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill), if the PHA so requests.

## **Foster Children and Foster Adults**

### **PHA Policy**

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

## **7B-II.E. Verification of Student Status**

### **PHA Policy**

The PHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

The family claims full-time student status for an adult other than the head, spouse, or cohead, or  
The family claims a child care deduction to enable a family member to further their education.

## **7B-II.F. Documentation of Disability**

The PHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The PHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA will not place this information in the tenant file. Under no circumstances will the PHA request a resident's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' Web site at [www.os.dhhs.gov](http://www.os.dhhs.gov). The PHA may make the following inquiries, provided it makes them of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

Inquiry into an applicant's ability to meet the requirements of ownership or tenancy

Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability

Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability

Inquiry about whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance

Inquiry about whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

## **Family Members Receiving SSA Disability Benefits**

Verification of receipt of disability benefits from the Social Security Administration (SSA) is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions [VG, p. 23].

### **PHA Policy**

For family members claiming disability who receive disability payments from the SSA, the PHA 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 PHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If a family member is unable to provide the document, the PHA 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 PHA.



## **Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

### **PHA Policy**

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

## ***7B-II.G. Citizenship or Eligible Immigration Status***

[24 CFR 5.508]

### **Overview**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. See the Eligibility chapter for detailed discussion of eligibility requirements. This chapter (7) discusses HUD and PHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy [24 CFR 5.508(g)(5)]

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

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors. The PHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

### **PHA Policy**

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

### **Eligible Immigrants**

#### **Documents Required**

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

#### **PHA Verification**

[HCV GB, pp 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this ACOP. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the PHA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

The PHA will follow all USCIS protocols for verification of eligible immigration status.

### ***7B-II.H. Verification of Preference Status***

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

#### **PHA Policy**

The PHA will verify preferences claimed by applicants as detailed in Section 4-III.B.

## **PART III: Verifying Income and Assets**

Chapter 6 of this ACOP describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures specified in Part I of this chapter.

#### **PHA Policy**

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

### ***7B-III.A. Earned Income***

#### **Tips**

##### **PHA Policy**

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

#### **Wages**

##### **PHA Policy**

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

### ***7B-III.B. Business and Self-Employment Income***

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

#### **PHA Policy**

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

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

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.



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

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

The PHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations. At any reexamination the PHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the PHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months, the PHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

### ***7B-III.C. Periodic Payments in Lieu of Earnings***

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 9.

#### **Social Security/SSI Benefits**

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

For applicants, since EIV does not contain SS or SSI benefit information, the PHA must ask applicants to provide a copy of their current SS and/or SSI benefit letter (dated within the last 120 calendar days) for each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the PHA should [help](#) the applicant request a benefit verification letter from SSA’s website at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. The PHA must obtain the original benefit letter from the applicant, make a photocopy of the document for the file, and return the original to the family.

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

If the participant agrees with the amount reported in EIV, the PHA must use the EIV-reported gross benefit amount to calculate annual income from Social Security. PHAs are required to use the EIV-reported SS and SSI benefit amounts when calculating income unless the tenant disputes the EIV-reported amount. For example, an SSA benefit letter may list the monthly benefit amount as \$450.80 and EIV displays the amount as \$450.00. The PHA must use the EIV-reported amount unless the participant disputes the amount.

If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in EIV, the PHA must request a current SSA benefit verification letter (dated within the last 120 calendar days) from each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the PHA should [help](#) the participant request a benefit verification letter from SSA’s website at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. The PHA must obtain the original benefit letter from the participant, make a photocopy of the document for the file, and return the original to the family.

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

### **7B-III.D. Alimony and Child Support**

[Notice PIH 2023-27]

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

#### **PHA Policy**

The methods the PHA will use to verify alimony and child support payments differ depending on whether the family declares that it receives regular payments.

If the family declares that it **receives regular payments**, verification will be obtained in the following order of priority:

- Copies of the receipts and/or payment stubs for the 12 months prior to PHA request
- Third-party verification form from the state or local child support enforcement agency
- Third-party verification form from the person paying the support
- Family's self-certification of amount received

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

### **7B-III.E. Nonrecurring Income**

[Notice PIH 2023-27]

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

#### **PHA Policy**

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

### **7B-III.F. Assets and Income from Assets**

#### **Net Family Assets**

[24 CFR 5.603]

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

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

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

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

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

#### **PHA Policy**

For families with net assets totaling \$50,000 or less, the PHA will accept the family's self-certification of the value of family assets and anticipated asset income. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration. The PHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question. Any income the family expects to receive from assets will be included in the family's annual income. The family will be required to provide third-party verification of net family assets every three years.

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

In determining the anticipated income from an interest-bearing checking or savings account when verification is required and the rate of return is known, the PHA will multiply the current balance of the account by the current rate of interest paid on the account. If a checking account does not bear interest, the anticipated income from the account is zero.

### **Self-Certification of Real Property Ownership [24 CFR 5.618(b)(2)]**

The PHA must determine whether a family has present ownership in real property that is suitable for occupancy for purposes of determining whether the family is compliant with the asset limitation described in Chapters 3. At admission and reexam, the PHA may accept a self-certification from the family that the family does not have any present ownership in any real property that is suitable for occupancy. If the family declares they have present ownership in real property, the PHA must obtain third-party verification.

#### **PHA Policy**

Both at admission and reexam, the PHA will accept self-certification from the family that the family does not have any present ownership in any real property. The certification will state that the family does not have any present ownership interest in any real property and must be signed by all family members 18 years of age and older. The PHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question.

If the family declares they have a present ownership in real property, the PHA will obtain third-party verification of the following factors: whether the family has the legal right to reside in the property; whether the family has effective legal authority to sell the property; and whether the property is suitable for occupancy by the family as a residence. However, in cases where a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA will comply with confidentiality requirements under 24 CFR 5.2007 and will accept a self-certification.

### ***7B-III.G. Assets Disposed of for Less than Fair Market Value***

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. HUD permits PHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28]. The PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

#### **PHA Policy**

The PHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

The PHA will verify the value of assets disposed of only if:

The PHA does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification appears obviously in error.

**Example 1:** An elderly resident reported a \$10,000 certificate of deposit at the last annual reexamination and the PHA verified this amount. Now the person reports that she has given this \$10,000 to her son. The PHA has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary.

**Example 2:** A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately \$5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the PHA will verify the value of this asset.

### **7B-III.H. Net Income from Real Property**

#### **PHA Policy**

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income).

If schedule E was not prepared, the PHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

### **7B-III.I. Federal Tax Refunds or Refundable Tax Credits**

[Notice PIH 2023-27]

PHAs are not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below \$50,000 (adjusted annually for inflation), even in years when full verification of assets is required or if the PHA does not accept self-certification of assets. PHAs must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than \$50,000.

### **7B-III.J. Retirement Accounts**

#### **PHA Policy**

The PHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

### **7B-III.K. Income from Excluded Sources**

[Notice PIH 2023-27]

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, the PHA is **not** required to verify the income using third-party verification, document why third-party verification is not available, or report the income on the 50058. *Fully excluded income* is defined as income where the entire amount qualifies to be excluded from the annual income determination in accordance with 24 CFR 5.609(b) and any *Federal Register* notice on

mandatory exclusions issued by HUD (for example, food stamps, earned income of a minor, or foster care funds).

PHAs may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, PHAs have the option of requiring additional verification.

For partially excluded income, the PHA is required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student).

#### **PHA Policy**

The PHA will accept the family's self-certification as verification of fully excluded income. The PHA may request additional documentation if necessary to document the income source.

The PHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

### **7B-III.L. Zero Income Reviews**

[Notice PIH 2023-27]

A *zero income review* is an assessment, sometimes periodic, performed by the PHA of the income of a family who claims that they do not receive income from any source, including from assets. During such reviews, it is common for PHAs to request that families complete and sign a worksheet explaining how they pay for the household's expenses. HUD does not require PHAs to conduct periodic zero income reviews. In calculating annual income, PHAs must not assign monetary value to nonmonetary in-kind donations from a food bank or similar organization received by the family [24 CFR 5.609(b)(24)(vi)]. PHAs that perform zero income reviews must update local discretionary policies, procedures, and forms. Families who begin receiving income which does not trigger an interim reexamination should no longer be considered zero income even though the family's income is not reflected on the Form HUD-50058.

#### **PHA Policy**

The PHA will check UIV sources and/or may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, earned income, child support, etc. are not being received by families claiming to have zero annual income.

The PHA will also require that each family member who claims zero income status complete a zero income form. If any sources of income are identified on the form, the PHA will verify the income in accordance with the policies in this chapter prior to including the income in the family's annual income.

The PHA will only conduct interims in accordance with PHA policy in Chapter 9.

### **7B-III.M. Student Financial Assistance**

[24 CFR 5.609(b)(9)]

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the federally mandated income exclusions are excluded [24 CFR 5.609(b)(9)(ii)].

#### **PHA Policy**

The PHA will request written third-party verification of both the source and the amount of student financial assistance. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, unless the student's only source of assistance is assistance under Title IV of the HEA, the PHA will request written verification of the cost of the student's tuition, books, supplies, room and board, and other required fees and charges to the student from the educational institution.

If the PHA is unable to obtain third-party written verification of the requested information, the PHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

Proposed



## **PART IV: Verifying Mandatory Deductions**

### ***7B-IV.A. Dependent and Elderly/Disabled Family Deductions***

The dependent and elderly/disabled family deductions require only that the PHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

#### **Dependent Deduction**

See Chapter 6 for a full discussion of this deduction. The PHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or cohead of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

#### **Elderly/Disabled Family Deduction**

See the Eligibility chapter for a definition of elderly and disabled families and Chapter 6 for a discussion of the deduction. The PHA will verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

### ***7B-IV.B. Health and Medical Expense Deduction***

Policies related to medical expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

The PHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) ([Pub. L. 104-191](#), 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed health and medical care expenses. The PHA may not request documentation beyond what is sufficient to determine anticipated health and medical care costs. Before placing bills and documentation in the tenant file, the PHA must redact all personally identifiable information [FR Notice 2/14/23].

#### **Amount of Expense**

##### **PHA Policy**

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts. The PHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The PHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

Written third-party verification forms if the family is unable to provide acceptable documentation.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

Before placing bills and documentation in the tenant file, the PHA will redact all personally identifiable information.

If the PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the PHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file.

If the information needs to be disposed of, the PHA will note in the individual's file that verification was received, the date received, and the name and address of the

person/organization that provided the verification. Under no circumstances will PHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

In addition, the PHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified health and medical care expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

### **Eligible Household**

The health and medical care expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62 or a person with disabilities. The PHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter, and as described in Chapter 7 (7-IV.A) of this plan.

### **Qualified Expenses**

To be eligible for the health and medical care expense deduction, the costs must qualify as medical expenses. See Chapter 6 for the PHA's policy on what counts as a medical expense.

### **Unreimbursed Expenses**

To be eligible for the health and medical care expense deduction, the costs must not be reimbursed by another source.

#### **PHA Policy**

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

### **Expenses Incurred in Past Years**

#### **PHA Policy**

- When anticipated costs are related to on-going payment of medical bills incurred in past years, the PHA will verify:
- The anticipated repayment schedule
- The amounts paid in the past, and
- Whether the amounts to be repaid have been deducted from the family's annual income in past years

### ***7B-IV.C. Disability Assistance Expenses***

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

The PHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) ([Pub. L. 104-191](#), 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed auxiliary apparatus or attendance care costs. The PHA may not request documentation beyond what is sufficient to determine anticipated reasonable attendant care and auxiliary apparatus costs. Before placing bills and documentation in the tenant file, the PHA must redact all personally identifiable information [FR Notice 2/14/23].

### **Amount of Expense**

#### **Attendant Care**



### **PHA Policy**

Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or cancelled checks.  
Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Before placing bills and documentation in the tenant file, the PHA will redact all personally identifiable information.

If the PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the PHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file.

If the information needs to be disposed of, the PHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will PHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

### **Auxiliary Apparatus**

#### **PHA Policy**

Expenses for auxiliary apparatus will be verified through:

Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the PHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in Chapter 6.).
- The expense is not reimbursed from another source (as described in Chapter 6.).

### **Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The PHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

### **Family Member(s) Permitted to Work**

The PHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

#### **PHA Policy**

The PHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

### **Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

#### **PHA Policy**

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

### ***7B-IV.D. Child Care Expenses***

Policies related to child care expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, the PHA must verify that:

- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.
- The costs are for an allowable type of child care.
- The costs are reasonable.

### **Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The PHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

### **Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

#### **PHA Policy**

The family and the care provider will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

### **Pursuing an Eligible Activity**

The PHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

#### **PHA Policy**

##### **Information to be Gathered**

The PHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

##### **Seeking Work**

Whenever possible the PHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the PHA will request family-provided verification from the agency of the member's job seeking efforts to date and require the family to submit to the PHA any reports provided to the other agency.

In the event third-party verification is not available, the PHA will provide the family with a form on which the family member must record job search efforts. The PHA will review this information at each subsequent reexamination for which this deduction is claimed.

#### **Furthering Education**

The PHA will request third-party documentation to verify that the person permitted to further their education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

#### **Gainful Employment**

The PHA will seek third-party verification of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

### **Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

#### **PHA Policy**

The PHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6.

The PHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The PHA will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

### **Reasonableness of Expenses**

Only reasonable child care costs can be deducted.

#### **PHA Policy**

The actual costs the family incurs will be compared with the PHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

If the family presents a justification for costs that exceed typical costs in the area, the PHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

### **Exhibit(s)**

#### ***Exhibit 7B-1: Summary of Documentation Requirements for Noncitizens***

**[HCV GB, pp. 5-9 and 5-10]**

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

#### **Elderly Noncitizens**

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

**All other Noncitizens**

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

<ul style="list-style-type: none"><li>• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li><li>• Form I-94 Arrival-Departure Record annotated with one of the following:</li><li>• “Admitted as a Refugee Pursuant to Section 207”</li><li>• “Section 208” or “Asylum”</li><li>• “Section 243(h)” or “Deportation stayed by Attorney General”</li><li>• “Paroled Pursuant to Section 221 (d)(5) of the USCIS”</li></ul>	<ul style="list-style-type: none"><li>• Form I-94 Arrival-Departure Record with no annotation accompanied by:</li><li>• A final court decision granting asylum (but only if no appeal is taken);</li><li>• A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);</li><li>• A court decision granting withholding of deportation; or</li><li>• A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li></ul>
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<ul style="list-style-type: none"><li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li></ul>	<ul style="list-style-type: none"><li>• Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.</li></ul>
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- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*

# Chapter 8: Leasing and Inspections

[24 CFR 5, Subpart G; 24 CFR 966, Subpart A]

## **Introduction**

Public housing leases are the basis of the legal relationship between HAWC and the tenant. All units must be occupied pursuant to a dwelling lease agreement that complies with HUD's regulations. HUD rules also require HAWC to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, HAWC may require additional inspections in accordance with PHA Policy.

This chapter is divided into two parts as follows:

Part I: Leasing. This part describes pre-leasing activities and HAWC's policies pertaining to lease execution, modification, and payments under the lease.

Part II: Inspections. This part describes HAWC's policies for inspecting dwelling units.

## **PART I: Leasing**

### ***8-I.A. Overview***

An eligible family may occupy a public housing dwelling unit under the terms of a lease. The lease must meet all regulatory requirements, and must also comply with applicable state and local laws and codes.

The term of the lease must be for a period of 12 months. The lease must be renewed automatically for another 12-month term, except that HAWC may not renew the lease if the family has violated the community service requirement [24 CFR 966.4(a)(2)].

Part I of this chapter contains regulatory information, when applicable, as well as the HAWC's policies governing leasing issues.

### ***8-I.B. Lease Orientation***

#### **PHA Policy**

After unit acceptance but prior to occupancy, a HAWC representative will provide a lease orientation to the family. At a minimum, the head of household or spouse is required to attend, but all adult household members will be encouraged to attend.

## **Orientation Agenda**

#### **PHA Policy**

When families attend the lease orientation, they will be provided with:

- A copy of the lease including HAWC's grievance procedure
- A copy of the resident handbook
- A copy of HAWC's schedule of maintenance charges
- A copy of the pamphlet Protect Your Family From Lead in Your Home
- A copy of "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse

- A copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12
- A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
- A copy of HAWC ‘s smoke free policy

Topics to be discussed will include:

- Applicable deposits and other charges
- Review and explanation of lease provisions
- Unit maintenance and work orders
- HAWCS’s reporting requirements
- Explanation of occupancy forms
- Community service requirements
- Family choice of rent
- HAWC’s Smoke free policy

### ***8-I.C. Execution of Lease***

The lease must be executed by the tenant and the HAWC, except for automatic renewals of a lease [24 CFR 966.4(a)(3)].

A lease is executed at the time of admission for all new residents. A new lease is also executed at the time of transfer from one PHA unit to another.

The lease must state the composition of the household as approved by HAWC (family members and any PHA-approved live-in aide) [24 CFR 966.4(a)(1)(v)]. See Section 8-I.D. for policies regarding changes in family composition during the lease term.

#### **PHA Policy**

The head of household, spouse or co-head, and all other adult members of the household will be required to sign the public housing lease prior to admission. An appointment will be scheduled for the parties to execute the lease. The head of household will be provided a copy of the executed lease and HAWC will retain a copy in the resident’s file.

Files for households that include a live-in aide will contain file documentation signed by the live-in aide, that the live-in aide is not a party to the lease and is not entitled to PHA 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 HAWC [24 CFR 966.4(a)(3)].

#### **Modifications to the Lease Form**

HAWC may modify its lease from time to time. However, HAWC must give residents 30 days advance notice of the proposed changes and an opportunity to comment on the changes. HAWC must also consider any comments before formally adopting the new lease [24 CFR 966.3].

After proposed changes have been incorporated into the lease and approved by the Board, each family must be notified at least 60 days in advance of the effective date of the new lease or lease revision. A resident's refusal to accept permissible and reasonable lease modifications that are made in accordance with HUD requirements, or are required by HUD, is grounds for termination of tenancy [24 CFR 966.4(l)(2)(iii)(E)].

#### **PHA Policy**

The family will have 30 days to accept the revised lease. If the family does not accept the offer of the revised lease within that 30 day timeframe, the family's tenancy will be terminated for other good cause in accordance with the policies in Chapter 13.

Schedules of special charges and rules and regulations are subject to modification or revision. Because these schedules are incorporated into the lease by reference, residents and resident organizations must be provided at least thirty days written notice of the reason(s) for any proposed modifications or revisions, and must be given an opportunity to present written comments. The notice must be delivered directly or mailed to each tenant; or posted in at least three conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the project office, if any, or if none, a similar central business location within the project. Comments must be taken into consideration before any proposed modifications or revisions become effective [24 CFR 966.5].

After the proposed revisions become effective they must be publicly posted in a conspicuous manner in the project office and must be furnished to applicants and tenants on request [24 CFR 966.5].

#### **PHA Policy**

When HAWC proposes to modify or revise schedules of special charges or rules and regulations, HAWC will post a copy of the notice in the central office, and will mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file.

### **Other Modifications**

#### **PHA Policy**

The lease will be amended to reflect all changes in family composition.

If, for any reason, any member of the household ceases to reside in the unit, the lease will be amended by drawing a line through the person's name. The head of household and HAWC will be required to initial and date the change.

If a new household member is approved by HAWC to reside in the unit, the person's name and birth date will be added to the lease. The head of household and HAWC will be required to initial and date the change. If the new member of the household is an adult, s/he will also be required to sign and date the lease.

Policies governing when and how changes in family composition must be reported are contained in Chapter 9, Reexaminations.

### ***8-I.E. Security Deposits***

[24 CFR 966.4(b)(5)]



At the option of HAWC, the lease may require security deposits. The amount of the security deposit cannot exceed one month's rent or a reasonable fixed amount as determined by HAWC. HAWC may allow for gradual accumulation of the security deposit by the family, or the family may be required to pay the security deposit in full prior to occupancy. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant after vacating the unit, or used for tenant services or activities.

### **PHA Policy**

Residents must pay a security deposit to the HAWC at the time of admission.

The amount of the security deposit will be based on unit size as follows:

- 1 bedroom: \$500
- 2 bedroom: \$600
- 3 bedroom: \$700
- 4 bedroom: \$800

The security deposit must be paid in full prior to occupancy, unless a payment plan is approved by the HAWC. No less than one-half of the deposit will be due prior to move in with the remainder split into two payments due in the next 2 months.

HAWC will hold the security deposit for the period the family occupies the unit. HAWC will not use the security deposit for rent or other charges while the resident is living in the unit. The deposit may not be used by the resident as payment of the final month of their tenancy once notice to vacate has been given.

Within 31 days of move-out, pursuant to Oregon Landlord/Tenant law, HAWC 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.

If the resident transfers to another unit, the security deposit will be refunded as appropriate based on the move out condition of the previous unit. The tenant will be liable for a security deposit at the new unit according to the security deposit schedule. The deposit for the new unit will be due within 30 days of their transfer.

## ***8-I.F. Payments under the Lease***

### **Rent Payments**

[24 CFR 966.4(b)(1)]

Families must pay the amount of the monthly tenant rent determined by HAWC in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

The lease must specify the initial amount of the tenant rent at the beginning of the initial lease term, and HAWC must give written notice stating any change in the amount of tenant rent and when the change is effective.



### **PHA Policy**

The tenant rent is due and payable at HAWC-designated location on the first of every month. If the first 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, HAWC will notify the family of the new amount and the effective date by sending a "Notice of Rent Adjustment" which will become an attachment to the lease.

### **Late Fees and Nonpayment**

At the option of HAWC, the lease may provide for payment of penalties when the family is late in paying tenant rent [24 CFR 966.4(b)(3)].

The lease must provide that late payment fees are not due and collectible until two weeks after HAWC 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 HAWC grievance procedures. HAWC must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

### **PHA Policy**

If the family fails to pay their rent by the fifth day of the month, and HAWC has not agreed to accept payment at a later date, a 14 day Notice to Vacate will be issued to the resident for failure to pay rent, demanding payment in full or the surrender of the premises.

In addition, if the resident fails to make payment by the end of office hours on the fifth day of the month, a late fee of \$50.00 will be charged. Notices of late fees will be in accordance with requirements regarding notices of adverse action. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, HAWC 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.

A charge will be assessed against the tenant for checks which are returned for Non-Sufficient Funds (NSF), or checks written on a closed account per the current Washington County Fee Schedule. The rent will be considered unpaid if the check is not redeemed, and the rent is not satisfied, by the fifth of the month. HAWC will always consider the rent unpaid when a check is returned as NSF or a check is written on a closed account. If HAWC has not agreed to accept payment at a later date, a Notice to Vacate will be issued for failure to pay rent.

Any rent payment received will be applied to the oldest rent charges in the resident's account, with the exception of debts currently under a payment agreement.

## **Excess Utility Charges**

If HAWC charges the tenant for consumption of excess utilities, the lease must state the basis for the determination of such charges. The imposition of charges for consumption of excess utilities is permissible only if the charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances [24 CFR 966.4(b)(2)].

Schedules of special charges for utilities that are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for excess utility consumption are not due and collectible until two weeks after HAWC 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 HAWC grievance procedures. HAWC must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

### **PHA Policy**

When applicable, families will be charged for excess utility usage according to HAWC's current posted schedule. Notices of excess utility charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, HAWC may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of excess utility charges is a violation of the lease and is grounds for eviction.

## **Maintenance and Damage Charges**

If HAWC charges the tenant for maintenance and repair beyond normal wear and tear, the lease must state the basis for the determination of such charges [24 CFR 966.4(b)(2)].

Schedules of special charges for services and repairs which are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the Property Management office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for maintenance and repair beyond normal wear and tear are not due and collectible until two weeks after HAWC 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 HAWC grievance procedures. HAWC must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

### PHA Policy

When applicable, families will be charged for maintenance and/or damages according to the HAWC's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, HAWC may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of maintenance and damage charges is a violation of the lease and is grounds for eviction.

## **PART II: Inspections**

### ***8-II.A. Overview***

HUD rules require HAWC to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, HAWC may require additional inspections, in accordance with PHA Policy. This part contains the HAWC's policies governing inspections, notification of unit entry, and inspection results.

### ***8-II.B. PHA Conducted Inspections***

The PHA is obligated to maintain dwelling units and the project in safe and habitable condition and to make necessary repairs to dwelling units [24 CFR 966.4(e)].

#### **Types of PHA Conducted Inspections**

##### **Move-In Inspections**

[24 CFR 966.4(i)]

The lease must require HAWC and the family to inspect the dwelling unit prior to occupancy in order to determine the condition of the unit and equipment in the unit. A copy of the initial inspection, signed by HAWC and the resident, must be provided to the tenant and be kept in the resident file.

### PHA Policy

Any adult family member may attend the initial inspection and sign the inspection form for the head of household.

##### **Move-Out Inspections**

[24 CFR 966.4(i)]

HAWC must inspect the unit at the time the resident vacates the unit and must allow the resident to participate in the inspection if he or she wishes, unless the tenant vacates without notice to HAWC.

HAWC must provide to the tenant a statement of any charges to be made for maintenance and damage beyond normal wear and tear.

The difference between the condition of the unit at move-in and move-out establishes the basis for any charges against the security deposit so long as the work needed exceeds that for normal wear and tear.

#### **PHA Policy**

HAWC will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear in accordance with Oregon State Landlord and Tenant Law (ORS Chapter 90).

### **Self-Inspections**

Annually all PHAs are required to self-inspect their properties, including all units, to ensure units are maintained in accordance with NSPIRE standards in 24 CFR 5.703. As part of the self-inspection process, PHAs must ensure that deficiencies previously cited and repaired as a result of an NSPIRE inspection have not subsequently failed.

The PHA must maintain the results of self-inspections for three years and must provide the results to HUD upon request.

### **Quality Control Inspections**

The purpose of quality control inspections is to assure that all defects were identified in the original inspection, and that repairs were completed at an acceptable level of craftsmanship and within an acceptable time frame

#### **PHA Policy**

Supervisory quality control inspections will be conducted in accordance with HAWC's maintenance plan.

### **Special Inspections**

#### **PHA Policy**

HAWC staff may conduct a special inspection for any of the following reasons:

- Housekeeping
- Unit condition
- Suspected lease violation
- Preventive maintenance
- Routine maintenance
- There is reasonable cause to believe an emergency exists

### **Other Inspections**

#### **PHA Policy**

Building exteriors, grounds, common areas and systems will be inspected according to the HAWC's maintenance plan.

## **Notice and Scheduling of Inspections**

### **Notice of Entry**

#### **Non-emergency Entries**

[24 CFR 966.4(j)(1)]

HAWC may enter the unit, with reasonable advance notification to perform routine inspections and maintenance, make improvements and repairs, or to show the unit for re-leasing. A written statement specifying the purpose of HAWC entry delivered to the dwelling unit at least 24 hours before such entry is considered reasonable advance notification.

#### **PHA Policy**

HAWC will notify the resident in writing at least 24 hours prior to any non-emergency inspection.

Entry for repairs requested by the family will require either 24 hours written notice or verbal consent to enter by the tenant. Resident-requested repairs presume permission for HAWC to enter the unit.

#### **Emergency Entries**

[24 CFR 966.4(j)(2)]

HAWC may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe that an emergency exists. If no adult household member is present at the time of an emergency entry, HAWC must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

### **Scheduling of Inspections**

#### **PHA Policy**

Inspections will be conducted during business hours. If a family needs to reschedule an inspection, they must notify HAWC at least 24 hours prior to the scheduled inspection. The PHA will reschedule the inspection no more than once unless the resident has a verifiable good cause to delay the inspection. The PHA may request verification of such cause.

### **Attendance at Inspections**

Residents are required to be present for move-in inspections [24 CFR 966.4(i)]. There is no such requirement for other types of inspections.

#### **PHA Policy**

Except at move-in inspections, the resident is not required to be present for the inspection. The resident may attend the inspection if he or she wishes.

If no one is at home, the inspector will enter the unit, conduct the inspection and leave a written statement showing time and date of entry.

If minor children are present with no adult, the inspector will not enter the unit and it will be considered denial of entry by the tenant. It is the resident's responsibility to be sure a responsible adult is present when minor children are in the house.

## **Repairs**

HAWC is obligated to maintain dwelling units and the project in decent, safe and sanitary condition and to make necessary repairs to dwelling units [24 CFR 966.4(e)].

### **Emergency Repairs**

[24 CFR 966.4(h)]

If the unit is damaged to the extent that conditions are created which are hazardous to the life, health, or safety of the occupants, the tenant must immediately notify the PHA of the damage, and the PHA must make repairs within a reasonable time frame. Under NSPIRE, the PHA must correct all Life-Threatening and Severe deficiencies within 24 hours.

If the damage was caused by a household member or guest, the PHA must charge the family for the reasonable cost of repairs. The PHA may also take lease enforcement action against the family.

If the PHA cannot make repairs quickly, the PHA must offer the family standard alternative accommodations. If the PHA can neither repair the defect within a reasonable time frame nor offer alternative housing, rent shall be abated in proportion to the seriousness of the damage and loss in value as a dwelling. Rent shall not be abated if the damage was caused by a household member or guest, or if the resident rejects the alternative accommodations.

### **Non-emergency Repairs**

#### **PHA Policy**

HAWC will correct non-life threatening health and safety defects within 30 days of the inspection date. If HAWC is unable to make repairs within that period due to circumstances beyond HAWC's control (e.g. required parts or services are not available, weather conditions, etc.) HAWC will notify the family of an estimated date of completion.

The family must allow HAWC access to the unit to make repairs.

### **Resident-Caused Damages**

#### **PHA Policy**

Damages to the unit beyond wear and tear will be billed to the tenant in accordance with the policies in 8-I.G., Maintenance and Damage Charges.

Repeated or excessive damages to the unit beyond normal wear and tear will be considered a serious or repeated violation of the lease.

### **Housekeeping**

#### **PHA Policy**

Residents whose housekeeping habits pose a non-emergency health or safety risk, encourage insect or rodent infestation, or cause damage to the unit are in violation of the lease. In these instances, the HAWC will provide proper notice of a lease violation.

A reinspection will be conducted within 30 days to confirm that the resident has complied with the requirement to abate the problem. Failure to abate the problem or allow for a reinspection is considered a violation of the lease and may result in termination of tenancy in accordance with Chapter 13.

Notices of lease violation will also be issued to residents who purposefully disengage the unit's smoke detector or carbon monoxide detector. A second incidence within 6 months will result in a lease termination. HAWC may also, at its discretion, fine residents under ORS 90.302(c) who willfully tamper with, or disable, smoke detectors or CO2 detectors. All adult residents whose smoke detectors have been disabled will also be required to attend a fire safety education session with their caseworker."

### ***8-II.C. NSPIRE INSPECTIONS [24 CFR 5.705(c); Notice PIH 2023-16]***

During an NSPIRE inspection, REAC inspectors will inspect areas and associated items or components that are listed in the regulations as affirmative requirements and those included within the NSPIRE standards. For most properties, the frequency of NSPIRE inspections is determined by the date of the prior inspection and the score received.

#### **Notice to Residents [Notice PIH 2023-16]**

The PHA must provide notice to all residents as described in 24 CFR 5.711(h) and the lease.

##### **PHA Policy**

The PHA will provide all residents with at least seven days' notice of an NSPIRE inspection. Notice will be provided through multiple communication methods, including by posted notice on each resident's door and through email where applicable. All materials, notices, and communications to families regarding the inspection will be clearly communicated and provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act (Section 504) and HUD's Section 504 regulation, and Titles II or III of the Americans with Disabilities Act (ADA) and implementing regulations.

# Chapter 9A: Reexaminations Effective Prior to HOTMA Compliance Date

[24 CFR 960.257, 960.259, 966.4]

## **Introduction**

This chapter describes the approach to reexamination of household composition and income prior to the implementation of the Housing Opportunity through Modernization Act (HOTMA). Reexaminations effective on or after the compliance date will be conducted in accordance with Chapter 9B. The HOTMA compliance date will be determined following HUD guidance regarding the timing of the necessary HUD software updates. HAWC will notify all program participants of the HOTMA compliance date once it is determined.

HAWC is required to monitor each family's income and composition over time, and to adjust the family's rent accordingly. PHAs must adopt policies concerning the conduct of annual and interim reexaminations that are consistent with regulatory requirements, and must conduct reexaminations in accordance with such policies [24 CFR 960.257(c)].

The frequency with which HAWC must reexamine income for a family depends on whether the family pays income-based or flat rent. HUD requires HAWC to offer all families the choice of paying income-based rent or flat rent at least annually. HAWC's policies for offering families a choice of rents are located in Chapter 6.

This chapter discusses both annual and interim reexaminations.

**Part I: Annual Reexaminations for Families Paying Income Based Rents.** This part discusses the requirements for annual reexamination of income and family composition. Full reexaminations are conducted at least once a year for families paying income-based rents.

**Part II: Reexaminations for Families Paying Flat Rents.** This part contains HAWC's policies for conducting full reexaminations of family income and composition for families paying flat rents. These full reexaminations are conducted at least once every 3 years. This part also contains HAWC's policies for conducting annual updates of family composition for flat rent families.

**Part III: Interim Reexaminations.** This part includes HUD requirements and HAWC 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, HAWC must recalculate the tenant rent. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

Policies governing reasonable accommodation, family privacy, required family cooperation and program abuse, as described elsewhere in this ACOP, apply to annual and interim reexaminations.

## **PART I: Annual Reexaminations for Families Paying Income Based Rents**

[24 CFR 960.257]

### ***9A-I.A. Overview***

For those families who choose to pay income-based rent, HAWC must conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a)(1)]. For families who choose flat rents, HAWC must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years [24 CFR 960.257(a)(2)]. Policies related to the reexamination process for families paying flat rent are located in Part II of this chapter.



For all residents of public housing, whether those residents are paying income-based or flat rents, HAWC must conduct an annual review of community service requirement compliance. This annual reexamination is also a good time to have residents sign consent forms for criminal background checks in case the criminal history of a resident is needed at some point to determine the need for lease enforcement or eviction.

HAWC is required to obtain information needed to conduct reexaminations. How that information will be collected is left to the discretion of HAWC. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

This part contains HAWC's policies for conducting annual reexaminations.

### ***9A-I.B. Streamlined Annual Reexaminations [24 CFR 960-257]***

HUD permits HAWC to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years HAWC may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. HAWC may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, HAWC must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources. If at least 90 percent of the family's income is from fixed sources, HAWC may streamline the verification of fixed income and may choose whether to verify non-fixed income amounts in years where no fixed-income review is required. If the family receives less than 90 percent of its income from fixed sources, HAWC may streamline the verification of fixed income and must verify non-fixed income annually.

#### **PHA Policy**

HAWC will streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. HAWC will document in the file how the determination that a source of income was fixed was made.

If a family member with a fixed source of income is added, HAWC will use third-party verification of all income amounts for that family member.

If verification of the COLA or rate of interest is not available, HAWC will obtain third-party verification of income amounts.

Third-party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

Third-party verification of non-fixed income will be obtained annually regardless of the percentage of family income received from fixed sources.

## ***9A-I.C. Scheduling Annual Reexaminations***

HAWC must establish a policy to ensure that the annual reexamination for each family paying an income-based rent is completed within a 12 month period [24 CFR 960.257(a)(1)].

### **PHA Policy**

Generally, HAWC will schedule annual reexaminations to coincide with the family's anniversary date. HAWC will begin the annual reexamination process approximately 120 days in advance of the scheduled effective date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family transfers to a new unit, HAWC will perform a new annual reexamination, and the anniversary date will be changed.

HAWC 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**

HAWC is required to obtain information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of HAWC. However, PHAs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

### **PHA Policy**

All families will be notified of their obligation to recertify by first class mail. The notification shall be sent one hundred twenty (120) days in advance of the anniversary date (but not less than ninety (90) days in advance of the anniversary date). If requested as an accommodation by a person with a disability, HAWC will provide the notice in an accessible format. The PHA 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.

The notification shall explain family choice of income-based or flat rent, with an estimate of what the income-based rent would be and a statement of what the flat rent is.

The family will indicate, in writing, whether the family chooses income-based or flat rent by checking the appropriate box on the document, signing the document, and returning the document to the HAWC.

If the family chooses flat rent, the family will fill out a Personal Declaration form, describing family composition.

The Personal Declaration Packet and all included forms will be signed by head of household, and if applicable, the spouse and all other adult family members.

If the family chooses flat rent, no reexamination appointment will be necessary.

## ***9A-I.D. Conducting Annual Reexaminations***

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c)(2)].

### **PHA Policy**

Families are provided with HAWC's reexamination forms via first class mail. HAWC will ask the family to complete the form and return it to HAWC within ten (10) business days. The reexamination forms include an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that HAWC requests from the family must be provided within 10 business days of the request. 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 sent a second request, asking that the information be provided within five business days of the request.

If the family does not provide the required documents or information within the required time frame of the second request, the family will be sent a notice of termination.

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

In general, HAWC completes the Annual Reexamination via first class mail and does not require families to participate in an annual reexamination interview process unless information is discovered during the review that requires additional explanation from the family.

If an interview is scheduled and the family is unable to attend, the family should contact HAWC in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, HAWC will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without HAWC approval, or if the notice is returned by the post office with no forwarding address, a notice of termination will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and HAWC must execute a certification attesting to the role and assistance of any such third party.

### **Change in Unit Size**

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. HAWC may use the results of the annual reexamination to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

### **Criminal Background Checks**

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)(1)(ii)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

#### **PHA Policy**

Each household member age 18 and over will be required to complete HAWC's Authorization to Release Information, which provides consent for a criminal background check as part of the annual reexamination process.

### **Compliance with Community Service**

For families who include nonexempt individuals, HAWC must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)]. See Chapter 11 for the HAWC's policies governing compliance with the community service requirement.

### **9A-I.E. Effective Dates**

As part of the annual reexamination process, HAWC must make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a)(1)].

#### **PHA Policy**

In general, an increase in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If HAWC 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 HAWC, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, increases in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual

reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a decrease in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date.

If HAWC 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 HAWC.

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 HAWC by the date specified, and this delay prevents HAWC from completing the reexamination as scheduled.

## **PART II: Reexaminations for Families Paying Flat Rents**

[24 CFR 960.257(2)]

### ***9A-II.A. Overview***

HUD requires that HAWC offer all families the choice of paying income-based rent or flat rent at least annually. HAWC's policies for offering families a choice of rents are located in Chapter 6.

For families who choose flat rents, HAWC must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years [24 CFR 960.257(a)(2)]. HAWC is only required to provide the amount of income-based rent the family might pay in those years that HAWC conducts a full reexamination of income and family composition, or upon request of the family after the family submits updated income information [24 CFR 960.253(e)(2)].

As it does for families that pay income-based rent, on an annual basis, HAWC must also review community service compliance and should have each adult resident consent to a criminal background check.

This part contains HAWC's policies for conducting reexaminations of families who choose to pay flat rents.

### ***9A-II.B. Full Reexamination of Family Income And Composition***

#### **Frequency of Reexamination**

##### **PHA Policy**

For families paying flat rents, HAWC will conduct a full reexamination of family income and composition once every 3 years.

## **Reexamination Policies**

### **PHA Policy**

In conducting full reexaminations for families paying flat rents, the HAWC 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.

### ***9A-II.C. Reexamination of Family Composition (“Annual Update”)***

As noted above, full reexaminations are conducted every 3 years for families paying flat rents. In the years between full reexaminations, regulations require HAWC to conduct a reexamination of family composition (“annual update”) [24 CFR 960.257(a)(2)].

The annual update process is similar to the annual reexamination process, except that HAWC does not collect information about the family’s income and expenses, and the family’s rent is not recalculated following an annual update.

### **Scheduling**

HAWC must establish a policy to ensure that the reexamination of family composition for families choosing to pay the flat rent is completed at least annually [24 CFR 960.257(a)(2)].

### **PHA Policy**

For families paying flat rents, annual updates will be conducted in each of the 2 years following the full reexamination.

In scheduling the annual update, HAWC will follow the policy used for scheduling the annual reexamination of families paying income-based rent as set forth in Section 9-I.B. above.

### **Conducting Annual Updates**

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c)(2)].

### **PHA Policy**

Generally, the family will not be required to attend an interview for an annual update. However, if HAWC determines that an interview is warranted, the family may be required to attend.

Notification of the annual update will be sent by first-class mail and will inform the family of the information and documentation that must be provided to HAWC. The family will have 10 business days to submit the required information to HAWC. If the family is unable to obtain the information or documents within the required time frame, the family may request an extension. HAWC 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, HAWC will send a second written notice to the family. The family will have 10 business days from the date of the second notice to provide the missing information or documentation to HAWC.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

## **Change in Unit Size**

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. HAWC may use the results of the annual update to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

## **Criminal Background Checks**

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

### **PHA Policy**

Each household member age 18 and over will be required to execute a consent form for criminal background check as part of the annual update process.

## **Compliance with Community Service**

For families who include nonexempt individuals, HAWC must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)].

See Chapter 11 for the HAWC's policies governing compliance with the community service requirement.

## **PART III: Interim Reexaminations**

[24 CFR 960.257; 24 CFR 966.4]

### ***9A-III.A. Overview***

Family circumstances may change throughout the period between annual reexaminations. HUD and HAWC policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances HAWC must process interim reexaminations to reflect those changes. HUD regulations also permit HAWC 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. HAWC must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and HAWC policies describing what changes families are required to report, what changes families may choose to report, and how HAWC will process both PHA- and family-initiated interim reexaminations.



## **9A-III.B. Changes in Family and Household Composition**

HAWC must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to provisions of the public housing lease, HAWC has limited discretion in this area.

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. Policies related to such transfers are located in Chapter 12.

### **PHA Policy**

All families, those paying income-based rent as well as flat rent, must report all changes in family and household composition that occur between annual reexaminations (or annual updates).

HAWC will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

### **New Family Members Not Requiring Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require HAWC approval. However, the family is required to promptly notify HAWC of the addition [24 CFR 966.4(a)(1)(v)].

### **PHA Policy**

The family must inform HAWC of the birth, adoption, or court-awarded custody of a child within 30 days.

### **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request HAWC 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)].

HAWC may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which HAWC consent will be given or denied. Under such policies, the factors considered by HAWC 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.
- HAWC's obligation to make reasonable accommodation for persons with disabilities.

### **PHA Policy**

Families must request HAWC approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 consecutive days or a total of 30 cumulative calendar days during any 12-month period and therefore no longer qualifies as a "guest". Requests must be made in writing and approved by HAWC prior to the individual moving into the unit.

HAWC will not approve the addition of new family or household members other than by birth, adoption, court-awarded custody, or marriage, if it will require the family to transfer to a larger



size unit (under the transfer policy in Chapter 12), unless the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by HAWC. Exceptions will be made on a case-by-case basis.

If an exception is made to allow the addition of a new family member other than by birth, adoption, court-awarded custody, or marriage, and the total number of family members is still under the maximum number of occupants outlined in the chart on 5.I.B., the family will not be transferred to a larger unit.

HAWC will not approve the addition of a new family or household member unless the individual meets the HAWC's eligibility criteria (see Chapter 3) and documentation requirements (See Chapter 7, Part II).

If HAWC determines that an individual does not meet the HAWC's eligibility criteria or documentation requirements, HAWC 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.

HAWC will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

## **Departure of a Family or Household Member**

### **PHA Policy**

If a family member ceases to reside in the unit, the family must inform the HAWC within 10 business days. This requirement also applies to family members who had been considered temporarily absent, who are now permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the HAWC within 10 business days.

## ***9A-III.C. Changes Affecting Income or Expenses***

Interim reexaminations can be scheduled either because HAWC has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, HAWC may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

### **PHA Policy**

This section only applies to families paying income-based rent. Families paying flat rent are not required to report changes in income or expenses unless the change is due to the addition of a new family member.

## **PHA-initiated Interim Reexaminations**

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by HAWC. They are not scheduled because of changes reported by the family.

### **PHA Policy**

HAWC will conduct interim reexaminations in each of the following instances:

1. For families receiving the Earned Income Disallowance (EID), HAWC will conduct an interim reexamination at the start, to adjust the exclusion with any changes in income, and at the conclusion of the second 12-month exclusion period (50 percent phase-in period).
2. If the family has reported zero income, the family will be required to attend zero income meetings as scheduled and an interim re-examination will be completed if any changes are reported as part of those meetings.
3. If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), HAWC will 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, HAWC will conduct an interim reexamination.

HAWC may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

### **Family-Initiated Interim Reexaminations**

HAWC must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 960.257(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 960.257(b)].

### **Required Reporting**

HUD regulations give HAWC the freedom to determine the circumstances under which families will be required to report changes affecting income.

#### **PHA Policy**

Families are required to report, in writing, any income increases from any source, including new employment, within ten (10) business days.

In cases of an increase in income, the PHA will conduct interim re-examinations if the family's income change will result in a rent increase of at least \$25 per month. If the increase in rent will be less than \$25 per month, the file will be noted but no interim re-examination will be completed.

In cases of decrease of income, the PHA will conduct an interim re-examination for any change in income that will result in a decrease in rent.

Families are required to report changes in income due to the addition of a new family member.

## **Optional Reporting**

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 960.257(b)]. The PHA must process the request if the family reports a change that will result in a reduced family income [PH Occ GB, p. 159].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

### **PHA Policy**

In cases of an increase in income, the PHA will conduct interim re-examinations if the family's income change will result in a rent increase of at least \$25 per month. If the increase in rent will be less than \$25 per month, the file will be noted but no interim re-examination will be completed.

In cases of decrease of income, the PHA will conduct an interim re-examination for any change in income that will result in a decrease in rent.

Families may report changes in income or expenses at any time.

## ***9A-III.D. Processing the Interim Reexamination***

### **Method of Reporting**

#### **PHA Policy**

The family must report all changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the PHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the PHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, by fax, or in person.

### **Effective Dates**

The PHA must make the interim reexamination within a reasonable time after the family request [24 CFR 960.257(b)].

#### **PHA Policy**

If the family share of the rent is to increase:

- The increase generally will be effective on the first of the month following 30 days' notice to the family.

- If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to decrease:

- The decrease will be effective on the first day of the month following the month in which the change was reported. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

## **PART IV: Recalculating Tenant Rent**

### ***9A-IV.A. Overview***

For those families paying income-based rent, the PHA must recalculate the rent amount based on the income information received during the reexamination process and notify the family of the changes [24 CFR 966.4, 960.257]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### ***9A-IV.B. Changes in Utility Allowances***

[24 CFR 965.507, 24 CFR 966.4]

The tenant rent calculations must reflect any changes in the PHA's utility allowance schedule [24 CFR 960.253(c)(3)]. Chapter 16 discusses how utility allowance schedules are established.

#### **PHA Policy**

Unless the PHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

### ***9A-IV.C. Notification of New Tenant Rent***

The public housing lease requires the PHA to give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective [24 CFR 966.4(b)(1)(ii)].

When the PHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA's schedule of Utility Allowances for families in the PHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the PHA must notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA's grievance procedure [24 CFR 966.4(c)(4)].

#### **PHA Policy**

The notice to the family will include a statement informing the family of their right to an explanation of the rent determination, or a hearing if they do not agree with the determination.

#### ***9A-IV.D. Discrepancies***

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of rent are discovered, corrections will be made in accordance with the policies in Chapter 15.

Proposed

## **Chapter 9B: Reexaminations Effective On or After HOTMA Compliance Date.**

[24 CFR 960.257, 960.259, 966.4]

### **Introduction**

This chapter describes the approach to reexamination of household composition and income after the implementation of the Housing Opportunity through Modernization Act (HOTMA). Reexaminations prior to the compliance date will be conducted in accordance with Chapter 9B. The HOTMA compliance date will be determined following HUD guidance regarding the timing of the necessary HUD software updates. HAWC will notify all program participants of the HOTMA compliance date once it is determined.

With the exception of non-public housing over income families, the PHA is required to reexamine each family's income and composition periodically, and to adjust the family's rent accordingly. PHAs must adopt policies for conducting annual and interim reexaminations that are consistent with regulatory requirements and must conduct reexaminations in accordance with such policies [24 CFR 960.257(c)]. The frequency with which the PHA must reexamine the income and composition of a family depends on whether the family pays income-based rent or flat rent. HUD requires the PHA to offer all families the choice of paying income-based rent or flat rent at least annually. The PHA's policies for offering families a choice of rents are located in Chapter 6.

This chapter discusses both annual and interim reexaminations.

**Part I: Annual Reexaminations for Families Paying Income Based Rents.** This part discusses the requirements for annual reexamination of income and family composition. Full reexaminations are conducted at least once a year for families paying income-based rents.

**Part II: Reexaminations for Families Paying Flat Rents.** This part contains the PHA's policies for conducting full reexaminations of family income and composition for families paying flat rents. These full reexaminations are conducted at least once every three years. This part also contains the PHA's policies for conducting annual updates of family composition for flat rent families.

**Part III: Interim Reexaminations.** This part includes HUD requirements and PHA 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 PHA must recalculate the tenant rent. While the basic policies that govern these calculations are provided in Chapter 6, this part describes the policies that affect these calculations during a reexamination.

**Part V: Non-Interim Reexamination Transactions.** This part describes transactions that do not entail changes to the family's adjusted income.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this ACOP, apply to annual and interim reexaminations.

### **PART I: Annual Reexaminations for Families Paying Income Based Rents**

24 CFR 960.257

#### ***9B-1.A. Overview***

For those families who choose to pay income-based rent, the PHA must conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a)(1)]. With the exception of over-income families, who must have their income reviewed at 12 and 24 months, for flat rent families, the PHA must conduct a reexamination of family composition at least annually and must conduct a

reexamination of family income at least once every three years [24 CFR 960.257(a)(2)]. For any non-public housing over income families, the PHA may not conduct an annual reexamination of family income. Policies related to the reexamination process for families paying flat rent are located in Part II of this chapter.

For all residents of public housing, whether those residents are paying income-based or flat rents, the PHA must conduct an annual review of community service requirement compliance. This annual reexamination is also a good time to have residents sign consent forms for criminal background checks in case the criminal history of a resident is needed at some point for the purposes of lease enforcement or eviction.

The PHA is required to obtain all of the information necessary to conduct reexaminations. How that information will be collected is left to the discretion of the PHA. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

Unlike when performing an interim reexamination or at intake, at annual reexamination, the PHA must determine the income of the family for the previous 12-month period, except where the PHA uses a streamlined income determination. Income from assets, however, is always anticipated, irrespective of the income examination type [Notice PIH 2023-27]. PHAs also have the option of using a “safe harbor” income verification from another federal means-tested program to verify gross annual income. Chapter 7 contains the PHA’s policies related to streamlined income determinations and the use of safe harbor income verifications.

This part contains the PHA’s policies for conducting annual reexaminations.

### ***9B-I.B. Scheduling Annual Reexaminations***

The PHA must establish a policy to ensure that the annual reexamination for each family paying an income-based rent is completed within a 12-month period [24 CFR 960.257(a)(1)].

#### **PHA Policy**

Generally, the PHA will schedule annual reexaminations to coincide with the family's anniversary date. The PHA will begin the annual reexamination process approximately 120 days in advance of the scheduled effective date.

*Anniversary date* is defined as 12 months from the effective date of the family’s last annual reexamination or, during a family’s first year in the program, from the effective date of the family’s initial examination (admission).

If the family transfers to a new unit, the PHA will perform a new annual reexamination, and the anniversary date will be changed.

The PHA may also schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

### **Notification of and Participation in the Annual Reexamination Process**

The PHA is required to obtain information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the PHA. However, PHAs should give tenants who were not provided the opportunity to provide contact information at the time of admission the option to complete Form HUD-92006 at this time. The PHA should provide the family with the opportunity to update, change, or remove information from the HUD-92006 at the time of the annual reexamination [Notice PIH 2009-36].

#### **PHA Policy**

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or cohead. If participation in an in-person

interview poses a hardship because of a family member's disability, the family should contact the PHA to request a reasonable accommodation (See Chapter 2).

Notification of annual reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend the scheduled interview the PHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without PHA approval, the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13. An advocate, interpreter, or other assistant may assist the family in the interview process.

### ***9B-I.C. Conducting Annual Reexaminations***

The terms of the public housing lease require the family to furnish information regarding income and family composition as may be necessary for the redetermination of rent, eligibility, and the appropriateness of the housing unit [24 CFR 966.4(c)(2)].

#### **PHA Policy**

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a PHA-designated reexamination form as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview or any stated deadline must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

### ***9B-I.D. Calculating Annual Income Annual Reexamination***

[24 CFR 5.609(c)(2) and Notice PIH 2023-27]

The PHA must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the PHA uses a streamlined income determination as indicated in Chapter 7 of this policy. The PHA may also use Safe harbor income determinations dated within the last 12 months from a means-tested federal public assistance program at annual reexamination as outlined in Chapter 7 of this policy.



Except when using streamlined or safe harbor income determinations, in determining the income of the family for the previous 12-month period, any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination in accordance with PHA policies and 24 CFR 5.657(c) or 960.257(b) must be considered.

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

A change in income may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. The PHA should look at the entirety of the family's unearned income and earned income from the prior year in which earned income may have been one constant job or many different jobs that start and stop.

Cost of Living Adjustments (COLA) to Social Security income and Social Security disability income are always considered changes to income because the COLA is an adjustment that automatically occurs annually by law. See Chapter 6 for PHA policies on when the COLA is applied and Chapter 7 on streamlined determination of income for inflationary adjustments.

Notice PIH 2023-27 lists the following steps to calculate both earned and unearned income at annual reexamination.

**Step 1:** The PHA determines annual income for the previous 12-month period by reviewing the following information:

- The EIV Income Report pulled within 120 days of the effective date of the annual reexamination;
- The income reported on the most recent HUD-50058; and
- The amount of prior-year income reported by the family on the PHA's annual reexamination paperwork.

**Step 2:** The PHA takes into consideration any interim reexamination of family income completed since the last annual reexamination.

If there was an interim reexamination performed, the PHA must use the annual income from the interim to determine the family's total annual income, provided there are no additional changes.

If the PHA did not perform an interim or there have been changes since the last reexamination, the PHA moves to Step 3.

**Step 3:** If there were changes in annual income not processed by the PHA since the last reexamination, the PHA must use current income. The family will be required to report their income for the prior year and whether there have been permanent changes.

If there are no reported changes to an income source, the PHA may use documentation of prior-year income to calculate the annual income. For example, the PHA may use the following documentation:

- EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- Current written third-party verification from the source verifying prior-year income that is dated within 120 days of receipt by the PHA, for example:
- Year-end statements
- Paycheck with year-to-date amounts
- Tax forms (Form 1040, W2, 1099, etc.)

If there are reported changes by the family or the PHA notes discrepancies between EIV and what the family reports, the PHA must follow the verification hierarchy (described in Chapter 7) to document and verify income. Exhibit 9-1 provides detailed examples of how the PHA calculates income from different sources at annual reexamination using the above method.

#### **PHA Policy**

When income is calculated using a streamlined income determination or Safe Harbor determination from a means-tested federal public assistance program in accordance with PHA policies in Chapter 7, the above is not applicable. However, where the family disagrees with the

PHA or other agency's determination of income or the PHA has other reason to use third-party verification in these circumstances, then the above will apply.

## **9B-I.E. Other Considerations**

### **Change in Unit Size**

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The PHA may use the results of the annual reexamination to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

### **Criminal Background Checks**

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)(1)(ii)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

#### **PHA Policy**

Each household member age 18 and over will be required to execute a consent form for a criminal background check as part of the annual reexamination process.

Additionally, HUD recommends that at annual reexaminations PHAs ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state [Notice PIH 2012-28].

#### **PHA Policy**

At the annual reexamination, the PHA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state. The PHA will use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant.

If the PHA proposes to terminate assistance based on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination. [24 CFR 5.903(f) and 5.905(d)]. (See Chapter 13.)

### **Compliance with Community Service**

For families who include nonexempt individuals, the PHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)].

See Chapter 11 for the PHA's policies governing compliance with the community service requirement.

## **9B-I.F. Effective Dates**

As part of the annual reexamination process, the PHA must make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a)(1)].

#### **PHA Policy**

In general, an *increase* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

- If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.
- If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA, but will always allow for the 30-day notice period.
- If the family causes a delay in processing the annual reexamination, *increases* in the tenant rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date.

- If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA.
- If the family causes a delay in processing the annual reexamination, *decreases* in the tenant rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.
- Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the PHA by the date specified, and this delay prevents the PHA from completing the reexamination as scheduled.

## **PART II: Reexamination for Families Paying Flat Rents**

[24 CFR 960.253(f)]

### ***9B-II.A. Overview***

HUD requires that the PHA offer all families the choice of paying income-based rent or flat rent at least annually. The PHA's policies for offering families a choice of rents are located in Chapter 6.

For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually and must conduct a reexamination of family income at least once every three years [24 CFR 960.253(f)]. The PHA is only required to provide the amount of income-based rent the family might pay in those years that the PHA conducts a full reexamination of income and family composition, or upon request of the family after the family submits updated income information [24 CFR 960.253(e)(2)]. However, these regulations are not applicable to over-income families. Once an over-income determination is made, the PHA must conduct an interim reexamination at 12 and 24 months, as applicable, to determine if the family remains over-income [Notice PIH 2023-03].

As it does for families that pay income-based rent, the PHA must also review compliance with the community service requirement for families with nonexempt individuals.

This part contains the PHA's policies for conducting reexaminations of families who choose to pay flat rents.

### ***9B-II.B. Full Reexamination of Family Income and Composition***

#### **Frequency of Reexamination**

##### **PHA Policy**

For families paying flat rents, the PHA will conduct a full reexamination of family income and composition once every three years.

However, for flat rent families who become over-income, this policy will not apply. The PHA will instead conduct an interim reexamination at 12 and 24 months following the initial over-

income determination as needed to verify the family remains over-income. The family will continue to be given a choice between income-based and flat rent at each annual reexamination during the over-income grace period.

If the family is subsequently determined to no longer be over-income:

- If the determination is the result of an annual reexamination, the family will be given a choice between income-based or flat rent at reexam. If the family selects flat rent, the PHA will resume reexamination of family income and composition once every three years.
- If determination is as a result of an interim reexamination, the PHA will conduct an annual reexamination for the family at their next scheduled annual date. If the family selects flat rent, the PHA will resume reexamination of family income and composition once every three years. Families will only be given the choice between income-based and flat rent at annual reexamination.

## **Reexamination Policies**

### **PHA Policy**

In conducting full reexaminations for families paying flat rents, the PHA will follow the policies used for the annual reexamination of families paying income-based rent as set forth in Sections 9-I.B through 9-I.E above.

## ***9B-II.C. Reexamination of Family Composition (“Annual Update”)***

As noted above, if full reexaminations are conducted every three years for families paying flat rents, in the years between full reexaminations, regulations require the PHA to conduct a reexamination of family composition (“annual update”) [24 CFR 960.257(a)(2)]. Over-income families who select the flat rent are not subject to annual update as their income must be reviewed, and an interim reexamination conducted, at 12 and 24 months as applicable.

The annual update process is similar to the annual reexamination process, except that the PHA does not collect information about the family’s income and expenses, and the family’s rent is not recalculated following an annual update.

## **Scheduling**

The PHA must establish a policy to ensure that the reexamination of family composition for families choosing to pay the flat rent is completed at least annually [24 CFR 960.257(a)(2)].

### **PHA Policy**

For families paying flat rents, annual updates will be conducted in each of the 2 years following the full reexamination.

In scheduling the annual update, the PHA will follow the policy used for scheduling the annual reexamination of families paying income-based rent as set forth in Section 9-I.B. above.

## **Conducting Annual Updates**

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c)(2)].

### **PHA Policy**

Generally, the family will not be required to attend an interview for an annual update. However, if the PHA determines that an interview is warranted, the family may be required to attend.

Notification of the annual update will be sent by first-class mail and will inform the family of the information and documentation that must be provided to the PHA. The family will have 10 business days to submit the required information to the PHA. If the family is unable to obtain the information or documents within the required time frame, the family may request an extension. The PHA will accept required documentation by mail, by email, by fax, or in person. If the family's submission is incomplete, or the family does not submit the information in the required time frame, the PHA will send a second written notice to the family. The family will have 10 business days from the date of the second notice to provide the missing information or documentation to the PHA.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

### **Change in Unit Size**

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The PHA may use the results of the annual update to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

### **Criminal Background Checks**

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

#### **PHA Policy**

Each household member age 18 and over will be required to execute a consent form for criminal background check as part of the annual update process.

### **Compliance with Community Service**

For families who include nonexempt individuals, the PHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)].

See Chapter 11 for the PHA's policies governing compliance with the community service requirement.

## **PART III: Interim Reexaminations**

24 CFR 960.257(b); 24 CFR 966.4; and Notice PIH 2023-27

### ***9B-III.A. Overview***

Family circumstances may change during the period between annual reexaminations. HUD and PHA policies define the types of information about changes in family circumstances that must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. A family may request an interim determination of family income or composition because of any changes since the last determination. The PHA must conduct any interim reexamination within a reasonable period of time after the family request or when the PHA becomes aware of a change in the family's adjusted income that must be processed in accordance with HUD regulations. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but the PHA generally should conduct the interim reexamination not longer than 30 days after the PHA becomes aware of changes in income.

Notice PIH 2023-27 changes the conditions under which interim reexaminations must be conducted, codifies when interim reexaminations should be processed and made effective, and requires related changes for annual reexaminations and streamlined income determinations. When the PHA determines



that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income.

## ***9B-III.B. Changes in Family and Household Composition***

### **Reporting**

PHAs must require families to report household composition changes; however, PHAs determine the timeframe in which reporting happens [Notice PIH 2023-27]. The PHA must adopt policies prescribing when and under what conditions the family must report changes in family composition [24 CFR 960.257(b)(5)].

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. Policies related to such transfers are located in Chapter 12.

#### **PHA Policy**

All families, those paying income-based rent as well as flat rent, must report all changes in family and household composition that occur between annual reexaminations (or annual updates) within 10 business days of the change.

The PHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

### **New Family Members Not Requiring Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 966.4(a)(1)(v)].

### **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 966.4(a)(1)(v)] or other household member (live-in aide or foster child) [24 CFR 966.4(d)(3)].

The PHA may adopt reasonable policies concerning residence by a foster child or a live-in aide and defining the circumstances in which PHA consent will be given or denied. Under such policies, the factors considered by the PHA may include [24 CFR 966.4(d)(3)(i)]:

Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.

The PHA's obligation to make reasonable accommodation for persons with disabilities.

#### **PHA Policy**

Families must request PHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 consecutive days or a total of 30 cumulative calendar days during any 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the PHA prior to the individual moving into the unit.

If adding a person to a household (other than a child by birth, adoption, or court-awarded custody) will require a transfer to a larger size unit (under the transfer policy in Chapter 12), the PHA will approve the addition only if the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by the PHA. Exceptions will be made on a case-by-case basis.

The PHA will not approve the addition of a new family or household member unless the individual meets the PHA's eligibility criteria (see Chapter 3) and documentation requirements (See Chapter 7, Part II).

If the PHA determines that an individual does not meet the PHA's eligibility criteria or documentation requirements, the PHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The PHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

### **Departure of a Family or Household Member**

The family must promptly notify the PHA if any household member (including a live-in aide, foster child, or foster adult) no longer lives in the unit. The PHA must process an interim for all decreases in adjusted income when a family member permanently moves out of the unit.

#### **PHA Policy**

If a household member ceases to reside in the unit, the family must inform the PHA within 10 business days. This requirement also applies to family members who had been considered temporarily absent, who are now permanently absent.

The PHA will process an interim if the family's adjusted income will decrease as a result of a family member permanently moving out of the unit.

### ***9B-III.C. Changes Affecting Income or Assets***

#### **PHA Policy**

This section only applies to families paying income-based rent. Families paying flat rent are not required to report changes in income or expenses.

Interim reexaminations for changes in income or expenses may be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change.

The PHA must estimate the income of the family for the upcoming 12-month period to determine family income for an interim reexamination [24 CFR 5.609(c)(1)]. Policies for projecting income are found in Chapter 6.

#### **Interim Decreases [24 CFR 960.257(b)(2) and Notice PIH 2023-27]**

A family may request an interim determination of family income for any change since the last determination. However, the PHA may decline to conduct an interim reexamination if the PHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's adjusted income. The PHA may set a lower threshold in PHA policy such as performing an interim for any decreases in adjusted income, although HUD prohibits the PHA from setting a dollar-figure threshold.

However, while the PHA has some discretion, HUD requires that the PHA perform an interim reexamination for a decrease in adjusted income of any amount in two circumstances:

- When there is a decrease in family size attributed to the death of a family member; or
- When a family member permanently moves out of the assisted unit during the period since the family's last reexamination.

In the above circumstances, the PHA must perform an interim reexamination for any decrease in adjusted income.

If the net effect of the changes in adjusted income due to a decrease in family size results in no change or an increase in annual adjusted income, then PHA must process the removal of the household member(s) as a non-interim reexamination transaction without making changes to the family's annual adjusted income.

#### **PHA Policy**

The PHA will conduct an interim reexamination any time the family's adjusted income has decreased by any amount.

### **Interim Increases [24 CFR 960.257(b)(3) and Notice PIH 2023-27]**

#### **Increases Less than 10 Percent**

PHAs must not process interim reexaminations for income increases that result in less than a 10 percent increase in annual adjusted income.

#### **Increases 10 Percent or Greater**

PHAs must conduct an interim reexamination of family income when the PHA becomes aware that the family's adjusted income has changed by an amount that the PHA estimates will result in an increase of 10 percent or more in adjusted income, with the following exceptions:

- PHAs may not consider any increases in earned income when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction during the same reexamination cycle; and
- PHAs may choose not to conduct an interim reexamination during the last three months of a certification period if a family reports an increase in income within three months of the next annual reexamination effective date.

When the family previously received an interim reexamination for a decrease to adjusted income during the same annual reexamination cycle, a PHA has the discretion whether to consider a subsequent increase in earned income.

#### **PHA Policy**

When a family reports an increase in their earned income between annual reexaminations, the PHA will not conduct an interim reexamination, regardless of the amount of the increase, and regardless of whether there was a previous decrease since the family's last annual reexamination.

The PHA will process an interim reexamination for any increases in unearned income of 10 percent or more in adjusted income.

The PHA will not perform an interim reexamination when a family reports an increase in income (whether earned or unearned income) within three months of their annual reexamination effective date. However, families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases in accordance with the PHA policies in Chapter 15.

### **Concurrent Increases in Earned and Unearned Income [Notice PIH 2023-27]**

When the family reports an increase in both earned and unearned income at the same time, the PHA must look at the earned and unearned income changes independently of each other to determine if an interim reexamination is performed. The PHA will only conduct an interim reexamination when the increase independently meets the 10 percent threshold and all other requirements for performing



interim reexaminations. For example, if a family reported increases in both earned and unearned income that overall resulted in a 12 percent increase in their adjusted income, but the change in earned income represented a 7 percent increase and the change in unearned income represented a 5 percent increase, the PHA may not perform an interim for either change since neither change meets the 10 percent threshold amount independently. If the change in unearned income met the 10 percent threshold in this case, the PHA would be required to perform an interim. If the change in earned income met the 10 percent threshold in this case, the PHA would refer to PHA policy to determine whether an interim was required.

### **Cumulative Increases [Notice PIH 2023-27]**

A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10-percent increase threshold, at which point the PHA must conduct an interim reexamination in accordance with PHA policy.

Public Housing Over-Income Families [24 CFR 960.507(c); Notice PIH 2020-3; and Notice PIH 2023-27] Regardless of changes in adjusted income, in some circumstances the PHA is required to conduct an interim reexamination to determine whether a family's income continues to exceed the public housing over-income limit. PHAs are required to conduct income examinations of public housing families who have been determined to exceed the over-income limit at specific intervals. When a PHA makes an initial determination that a family is over-income during an interim reexamination, the PHA must conduct a second interim reexamination 12 months after the over-income determination, and then again 12 months after the second over-income determination, unless the family's income falls below the over-income limit during the 24-month period. This continued evaluation of the family's over-income status requires the PHA to notify any family that exceeds the over-income limit that they remain over the income limit, even if the family is paying the flat rent [24 CFR 960.253]. An interim income reexamination to determine if a public housing family remains over-income does not reset the family's normal annual reexamination date.

### **Family Reporting**

The PHA must adopt policies consistent with HUD regulations prescribing when and under what conditions the family must report a change in family income or composition [24 CFR 960.257(b)(5)]. PHA policy may require families to report only changes that the family estimates meet the threshold for an interim reexamination or the PHA may establish policies requiring that families report all changes in income and household composition, and the PHA will subsequently determine if the change requires an interim reexamination [Notice PIH 2023-27].

When the PHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income. For example, if the family is reporting a decrease in adjusted income that is more than 10 percent, but the family also had a change in assets that would result in a change in income, the change in assets must also be reviewed [Notice PIH 2023-27].

#### **PHA Policy**

The family will be required to report all changes in income regardless of the amount of the change, whether the change is to earned or unearned income, or if the change occurred during the last three months of the certification period. Families must report changes in income within 10 business days of the date the change takes effect. The family may notify the PHA of changes either orally or in writing. If the family provides oral notice, the PHA may also require the family to submit the changes in writing.

Within 10 business days of the family reporting the change, the PHA will determine whether the change will require an interim reexamination.

- If the change will not result in an interim reexamination, the PHA will note the information in the tenant file but will not conduct an interim reexamination. The PHA

will send the family written notification within 10 business days of making this determination informing the family that the PHA will not conduct an interim reexamination.

- If the change will result in an interim reexamination, the PHA will determine the documentation the family will be required to submit based on the type of change reported and PHA policies in Chapter 7. The PHA will ask the family to report changes in all aspects of adjusted income at this time. The family must submit any required information or documents within 10 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, email, fax, or in person. The PHA will conduct the interim within a reasonable time period based on the amount of time it takes to verify the information.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the PHA determines that an interview is warranted, the family may be required to attend.

### ***9B-III.D. Effective Dates***

#### **Changes Reported Timely [24 CFR 960.257(b)(6) and Notice PIH 2023-27]**

If the family reports a change in family income or composition timely in accordance with PHA policies:

- For rent increases, the PHA must provide the family with 30 days advance written notice. The rent increase is effective the first of the month after the end of that 30-day notice period.
- Rent decreases are effective on the first of the month after the date of the actual change leading to the interim reexamination of family income. This means the decrease will be applied retroactively.

#### **Changes Not Reported Timely [24 CFR 960.257(b)(6)(ii) and (iii) and Notice PIH 2023-27]**

If the family failed to report a change in family income or composition timely in accordance with PHA policies:

- For rent increases, the PHA must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income.
- For rent decreases, the PHA must implement the change no later than the first rent period following completion of the interim reexamination.

However, the PHA may choose to adopt a policy that would make the effective date of the rent decrease retroactive to the first of the month following completion of the reexamination. PHAs may choose to establish conditions or requirements for when such a retroactive application would apply. PHAs that choose to adopt such policies must ensure the earliest date that the retroactive decrease is applied is the later of:

- The first of the month following the date of the change that led to the interim reexamination; or
- The first of the month following the most recent previous income examination.

In applying a retroactive change in rent as the result of an interim reexamination, the PHA must clearly communicate the effect of the retroactive adjustment to the family so that there is no confusion over the amount of the rent that is the family's responsibility.

#### **PHA Policy**

In general, when the family fails to report a change in income or family composition timely, and the change would lead to a rent decrease, the PHA will apply the decrease the first of the month following completion of the interim reexamination.

However, the PHA will apply the results of the interim reexamination retroactively where a family's ability to report a change in income promptly may have been hampered due to extenuating circumstances such as a natural disaster or disruptions to PHA management operations. The PHA will decide to apply decreases retroactively on a case-by-case basis. When the PHA applies the results of interim decreases retroactively, the PHA will clearly communicate the effect of the retroactive adjustment to the family and may enter into a repayment agreement in accordance with PHA policies.

## **PART IV: Recalculating Tenant Rent**

### ***9B-IV.A. Overview***

For those families paying income-based rent, the PHA must recalculate the rent amount based on the income information received during the reexamination process and notify the family of the changes [24 CFR 966.4, 960.257]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### ***9B-IV.B. Changes in Utility Allowances***

[24 CFR 965.507, 24 CFR 966.4]

The tenant rent calculations must reflect any changes in the PHA's utility allowance schedule [24 CFR 960.253(c)(3)]. Chapter 16 discusses how utility allowance schedules are established.

#### **PHA Policy**

Unless the PHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

### ***9B-IV.C. Notification of New Tenant Rent***

The public housing lease requires the PHA to give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective [24 CFR 966.4(b)(1)(ii)].

When the PHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA's schedule of Utility Allowances for families in the PHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the PHA must notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA's grievance procedure [24 CFR 966.4(c)(4)].

#### **PHA Policy**

The notice to the family will include the annual and adjusted income amounts that were used to calculate the tenant rent.

### ***9B-IV.D. Discrepancies***

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or

underpayment of rent are discovered, corrections will be made in accordance with the policies in Chapter 15.

## **PART V: Non-Interim Reexamination Transactions**

Notice PIH 2023-27

Families may experience changes within the household that do not trigger an interim reexamination under PHA policy and HUD regulations but which HUD still requires the PHA to report via Form HUD-50058. These are known as *non-interim reexamination transactions*. In these cases, PHAs will submit a separate, new action code on Form HUD-50058. The following is a list of non-interim reexamination transactions:

Adding or removing a hardship exemption for the child care expense deduction;

Updating or removing the phased-in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (the phased-in relief will begin at an eligible family's first annual or interim reexamination, whichever is sooner, after January 1, 2024);

- Adding or removing general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction;
- Adding or removing a minimum rent hardship;
- Adding or removing a non-family member (i.e., live-in aide, foster child, foster adult);
- Ending a family's EID or excluding 50 percent (decreased from 100 percent) of a family member's increase in employment income at the start of the second 12-month EID period.
- Adding a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Removing a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Adding/updating a family or household member's Social Security number; and
- Updating a family member's citizenship status from eligible to ineligible or vice versa, resulting in a change to the family's rent and/or utility reimbursement, if applicable (i.e., family begins receiving prorated assistance or previously prorated assistance becomes full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible noncitizen(s).

PHAs must make all other changes to assets, income, and deductions at the next annual or interim reexamination of income, whichever is sooner.

**Exhibit(s)**

***Exhibit 9-1: Calculating Income at Annual Reexamination***

**Example 1: Calculating Annual Income at Annual Reexamination Using EIV**

Staff are processing the 3/1/2024 annual reexamination for Ruby Myers and her minor daughter, Georgia. No interim reexaminations have been processed, and Ruby has not reported any changes to annual income to the PHA since the 3/1/2023 annual reexamination. The SSA-published 2024 COLA is 7 percent.	
<u>Last reexamination – 3/1/2023 Annual Reexamination</u>	
<u>Ruby:</u>	<u>Georgia:</u>
<u>Wages: \$30,000</u>	<u>SSI: \$10,980 (\$915 monthly)</u>

The EIV report pulled on 12/15/2023

Ruby:	Georgia:
Wages Total: \$33,651	SSI Total: \$10,980
Quarter 3 of 2023: \$8,859 (City Public School)	2023 benefit \$915 monthly
Quarter 2 of 2023: \$8,616 (City Public School)	
Quarter 1 of 2023: \$8,823 (City Public School)	
Quarter 4 of 2022: \$7,353 (City Public School)	

Income Reported on Reexamination Application

Ruby:

Georgia:

Wages at City Public School: \$32,000  
(switched jobs but no permanent change to amount)

SSI benefits: \$10,980 (no changes)

Calculating Ruby's wages:

Calculating Georgia's SSI benefit:

Step 1: Determine prior annual income from EIV (i.e., Q4 2022 through Q3 of 2023: \$33,651).

Step 1: Determine the prior annual income from EIV (i.e., \$915 x 12 months: \$10,980).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination).

Step 3: Ruby certifies that the \$33,651 of wages in EIV is accurate and reflects her current annual income, so the PHA will use \$33,651 for annual wages for the 3/1/2024 annual reexamination given there have been no additional changes to annual income.

Step 3: Ruby certifies the SSI income in EIV is accurate and reflects Georgia's current annual income. The PHA must adjust the prior-year income (2023 SSI benefit) by the 7- percent COLA and will use this amount to calculate annual SSI income for the 3/1/2024 annual reexamination:

COLA: \$64.05 (\$915 x 0.07)

New gross SSI benefit: \$11,748.60 (\$979.05 x 12 months)

If Ruby did not agree with the annual wages reported in EIV, the PHA/MFH Owner would be required to verify her current income in accordance with HUD's verification hierarchy.

Summary of Annual Income (as reported on the HUD-50058)

Ruby (Head of Household):

Georgia (Other Youth Under 18):

Other Wage: \$33,651

SSI: \$11,748

Myers Family Total Annual Income: \$45,399

**Example 2: Calculating Annual Income at Annual Reexamination Using EIV:  
Family Disagrees with EIV**

Staff are processing Paul Hewson's 5/1/2024 annual reexamination. Since the last annual reexamination, Paul reported a decrease in annual income that exceeded 10 percent. Last year, Paul reported a decrease in earned income because he transferred from a full-time job at Sasha's Sweets to a part-time job at Viking Bakery. Following HUD's EIV verification hierarchy, staff confirmed Paul was no longer employed at Sasha's Sweets and decreased his anticipated annual income from \$28,000 to \$7,500 resulting from his new part-time employment at Viking Bakery; an interim reexamination was processed effective 7/1/2023. After the 7/1/2023 interim, Paul worked briefly at two different jobs, but he says he is no longer working and is not planning to work.

5/1/2023 Annual Reexamination

Wages: \$28,000

The EIV report pulled on 1/15/2024

Wages Total: \$18,271

Quarter 3 of 2023: \$2,500 (Viking Bakery)

Quarter 3 of 2023: \$796 (Sweet Tooth Candy Bar)

Quarter 2 of 2023: \$1,300 (Sasha's Sweets)

Quarter 2 of 2023: \$584 (Larry's Concessions)

Quarter 2 of 2023: \$2,401 (Viking Bakery)

Quarter 1 of 2023: \$6,500 (Sasha's Sweets)

Quarter 4 of 2022: \$600 (Sasha's Sweets)

SS/SSI: No history of benefits

Income Reported on Reexamination Application

Wages: \$0 (permanent change; no longer receiving)

Social Security: \$14,400 (\$1,200 monthly)

Paul certified on the PHA's annual reexamination paperwork that he does not agree with the annual wages of \$18,271 reported in EIV and it is not reflective of his current anticipated annual income. He reported he is currently unemployed, and provided a copy of an award letter from the Social Security Administration to document that he will begin receiving a monthly disability benefit of \$1,200 effective 3/1/2024.

Calculating Wages and SS Benefit

Step 1: Determine prior annual income taking into consideration the 8/1/2023 interim reexamination (i.e., EIV wages reflected Q4 2022 through Q3 2023: \$18,271)

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there was a 7/1/2023 interim that reduced wages to \$7,500.

Step 3: Obtain documentation to verify current income and confirm Paul is no longer employed at Viking Bakery or The Sweet Tooth Candy Bar (the employers reported in the most recent quarter of EIV). This step is necessary, because Paul did not agree with the EIV income report or income reported on the last interim reexamination. Paul reported that he is no longer working at all.

Process the annual reexamination effective 5/1/2024 using annual SS income of \$14,400 and \$0 wages.

Summary of Annual Income (as reported on the HUD-50058)

Paul (Head of Household): \$14,400 (SS)

Hewson Family Total Annual Income: \$14,400



### Example 3: Calculating Annual Income at Annual Reexamination

Staff are processing the 11/1/2024 annual reexamination for Samantha and Fergus Pool, head of household and spouse. On 2/14/2024 Samantha reported her monthly child support payment was reduced from \$200 to \$100 per month, but an interim reexamination was not processed because the reduction in child support income for Samantha's daughter, Hailey, did not result in a decrease of 10 percent or more in annual adjusted income, and the PHA did not establish a lower threshold. Samantha did not report any additional changes to the PHA.

#### Last reexamination – 11/1/2023 Annual Reexamination

Samantha:

Business income: \$28,000

VA disability pension: \$12,000

Child support: \$2,400

Fergus:

Wages: \$8,250

Other non-wage income: \$3,000 (Go Fund Me online fundraiser)

#### The EIV report pulled on 9/16/2024

Samantha:

Wages Total: \$0 (no wage data reported since Q1 2023)

Fergus:

Wages Total: \$8,600

Quarter 1 of 2024: \$2,100 (Ian's Fish 'n' Chips)

Quarter 1 of 2024: \$500 (Claire's Healthcare Supplies)

Quarter 4 of 2023: \$1,000 (Claire's Healthcare Supplies)

Quarter 3 of 2023: \$1,800 (The Onion Garden Shop)

Quarter 2 of 2023: \$3,200 (Ivar's Fish Haus)

### Current Family Circumstances: Income Reported on Reexamination Application

Samantha and Fergus reported how much income was earned/received in the previous 12-month period and noted permanent changes, where applicable, for each source of their income on PHA's annual reexamination form. However, no information was reported by the family concerning other non-wage income. Fergus reported only wages and his current employment at Ian's Fish 'n' Chips for the annual reexamination. The family supplied the supporting documentation noted below to the PHA for the 11/1/2024 annual reexamination.

Samantha:

Business income: \$28,750 (last year); has decreased to \$18,000 (permanent change)

VA disability benefit: \$12,000 (last year); has increased to \$12,300 (permanent change)

Child support: \$2,400 (last year); has decreased to \$1,200 (permanent change)

Fergus:

Wages: \$6,000

### Calculating Samantha's Net Business Income

Step 1: Determine prior annual net business income (i.e., \$28,000 on last HUD-50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: Adjust to reflect current net business income. Samantha reported on the annual reexamination application that business income permanently decreased to \$18,000. The PHA must obtain supporting documentation from Samantha that demonstrates current net business income. Samantha provided documentation that supported the current annual net business income is \$18,000. Process the annual reexamination effective 11/1/2024 using annual net business income determined in Step 3.

### Calculating Samantha's VA Pension Income

Step 1: Determine prior annual VA pension income (i.e., \$12,000 supported by a VA award letter Samantha supplied that documents the prior year monthly VA pension was \$1,000).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The PHA needs to adjust to reflect current VA pension income. Samantha supplies a VA award letter showing a monthly pension of \$1,025, or \$12,300 annually. Process the annual reexamination effective 11/1/2024 using annual VA pension income determined in Step 3 (\$12,300 in this example).

### Calculating Samantha's Child Support Income

Step 1: Determine prior annual child support income (i.e., \$2,400 on the last HUD-50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination. The family reported a decrease from \$200 to \$100 monthly, but the change was not processed because it did not meet the threshold.

Step 3: The family reported changes, so the PHA must adjust to reflect current child support income. In this example, the family submitted a child support history report from the local child support office that documents regular \$100 monthly child supports payments beginning 3/1/2024 through the current month. Process the annual reexamination effective 11/1/2024 using current annual child support income determined in Step 3 (\$1,200 in this example).

#### Calculating Fergus' Wages

Step 1: Determine prior annual income from wages in EIV (i.e., Q2 2023 through Q1 of 2024: \$8,600).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: There is a discrepancy between what the family reported and EIV, so the PHA must verify and adjust to reflect current annual income from wages. Fergus reported \$6,000 in annual income from wages on the annual reexamination from a single employer, Ian’s Fish ‘n’ Chips. The PHA projected annual income of \$7,800 based on the two paystubs for this employer, and EIV shows \$8,600 earned in the most recent four quarters in EIV. To complete Step 3, the PHA must do the following:

- Resolve the discrepancy between EIV wages, the \$6,000 annual income Fergus reported, and the \$7,800 projected based on the paystubs he provided, and
- Verify he is no longer employed at Claire’s Healthcare Supplies in accordance with HUD’s verification hierarchy and local policies.

The PHA determined that Fergus reported his net vs. gross annual income from wages, which he corrected on the annual reexamination form to reflect his current gross annual income of \$9,000. The PHA verified Fergus was no longer employed at Claire’s Healthcare Supplies and obtained two additional paystubs. Based on four current and consecutive paystubs, Fergus is now projected to earn \$9,360 annually. Process the annual reexamination effective 11/1/2024 using income from wages determined in Step 3 (\$9,360 in this example).

Calculating Fergus’ Other Non-Wage Income

Step 1: Determine prior annual income from other non-wage income (i.e., \$3,000 on the last HUD– 50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The family did not report any non-wage income on the annual reexamination form, but it was included on the last HUD–50058. The PHA must verify and adjust to reflect current non-wage income. The PHA must verify no income was received through a “Go Fund Me” online fundraiser so that it may be excluded. Fergus provided a self-certification that he hasn’t solicited funds online and doesn’t plan to in the following year; he also provided records from the account that documented no fundraising activity in the prior 12-month period. Process the annual reexamination effective 11/1/2024 using annual non-wage income of \$0 determined in Step 3.

Summary of Annual Income (as reported on the HUD-50058)

Samantha (Head of Household): Own business: \$18,000 Pension: \$12,300 Child support: \$1,200	Fergus (Co-head): Wages: \$9,360
Poole Family Total Annual Income: \$40,860	

## **Chapter 10: Pets**

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

### **Introduction**

This chapter explains the PHA'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 PHA to provide a decent, safe and sanitary living environment for all tenants, and to protect and preserve the physical condition of the property, as well as the financial interest of the PHA.

The chapter is organized as follows:

Part I: Assistance and Companion 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; Fair Housing Act (42 U.S.C.); 24 CFR 5.303; 24 CFR 960.705; Notice FHEO 2020-01]

#### ***10-I.A. Overview***

This part discusses situations under which permission for an assistance animal, including service and support animals, may be denied, and also establishes standards for the care of assistance animals. Notice FHEO 2020-01 was published January 28, 2020. The notice provides guidance to help PHAs and other housing providers distinguish between a person with a non-obvious disability who has a legitimate need for an assistance animal and a person without a disability who simply wants to have a pet or avoid the costs and limitations imposed by the PHA's pet policies. FHEO 2020-01 makes clear that the notice is guidance and a tool for PHAs and other housing providers to use at their discretion and provides a set of best practices for addressing requests for assistance animals. The guidance in FHEO 2020-01 should be read together with HUD's regulations prohibiting discrimination under the Fair Housing Act (FHA) and the HUD/Department of Justice (DOJ) Joint Statement on Reasonable Accommodation under the Fair Housing Act. Housing providers may also be subject to the Americans with Disabilities Act (ADA) and should therefore refer also to DOJ's regulations implementing Titles II and III of the ADA at 28 CFR Parts 35 and 36, in addition to DOJ's other guidance on assistance animals. There are two types of assistance animals: (1) service animals, and (2) other animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (i.e., support animals).

Assistance animals, including service and support animals, are not pets and thus are not subject to the PHA's pet policies described in Parts II through IV of this chapter [24 CFR 5.303; 960.705; Notice FHEO 2020-01].

## **10-I.B. Approval of Assistance Animals**

A person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires correlation between the person's disability and their need for the animal [PH Occ GB, p. 179].

A PHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with the disability [PH Occ GB, p. 178].

A PHA's refusal to permit persons with a disability to use and live with an assistance animal that is needed to assist them, would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless [PH Occ GB, p. 179]:

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others

PHAs have the authority to regulate assistance animals under applicable federal, state, and local law [24 CFR 5.303(b)(3); 960.705(b)(3)].

### **Service Animals**

Notice FHEO 2020-01 states that PHAs should initially follow the Department of Justice (DOJ) analysis to assessing whether an animal is a service animal under the Americans with Disabilities Act (ADA). Under the ADA, a *service animal* means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability.

As a best practice, housing providers may use the following questions to help them determine if an animal is a service animal under the ADA:

- Is the animal a dog? If not, the animal is not a service animal but may be another type of assistance animal for which an accommodation is needed (support animal).
- Is it readily apparent that the dog is trained to do work or perform tasks for the benefit of the individual with a disability? If yes, further inquiries are inappropriate because the animal is a service animal. If not, it is advisable that the PHA limit its inquiries to the following two questions:
  - (1) Is the animal required because of the disability?
  - (2) What work or task has the animal been trained to perform?

If the answer to question (1) is "yes" and work or a task is identified in response to question (2), grant the requested accommodation if otherwise reasonable. If the answer to either question is "no," the

animal does not qualify as a service animal but may be a support animal.

A service animal must be permitted in all areas of the facility where members of the public are allowed.

### **Support/Companion Animals (Assistance Animals other than Service Animals)**

If the animal does not qualify as a service animal, the PHA must next determine whether the animal would qualify as a support animal (other type of assistance animal). If the individual has indeed requested a reasonable accommodation to get or keep an animal in connection with a physical or mental impairment or disability, the PHA may use the following questions to help them assess whether to grant the accommodation in accordance with the policies outlined in Chapter 2 (the PHA is not required to grant a reasonable accommodation that has not been requested):

- Does the person have an observable disability or does the PHA already have information giving them reason to believe that the person has a disability? If not, has the person requesting the accommodation provided information that reasonably supports that the person seeking the accommodation has a disability?
- If the person has an observable disability, the PHA already has information giving them reason to believe the person has a disability, or the person has provided information supporting that he or she has a disability, then has the person provided information that reasonably supports that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual's disability?
- If yes, is the animal commonly kept in households? An *animal commonly kept in households* would be a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes. For purposes of this assessment, reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household animals. If the individual is requesting to keep a unique animal not commonly kept in households, then the requestor has the substantial burden of demonstrating a disability-related therapeutic need for the specific animal or the specific type of animal. Such individuals are encouraged to submit documentation from a health care professional.

### **General Considerations**

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 their need for the animal [PH Occ GB, p. 179].

Before denying a reasonable accommodation request due to lack of information confirming an individual's disability or disability-related need for an animal, the PHA is encouraged to engage in a good-faith dialog with the requestor called the "interactive process" [FHEO 2020-01].

A PHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with the disability [PH Occ GB, p. 178].

A PHA's refusal to permit persons with a disability to use and live with an assistance animal that is needed to assist them, would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless [PH Occ GB, p. 179]:

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others

The Fair Housing Act does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others. A PHA may therefore refuse a reasonable accommodation for an assistance animal if the specific animal poses a direct threat that cannot be eliminated or reduced to an acceptable level through the actions the individual takes to maintain or control the animal (e.g., keeping the animal in a security enclosure).

While most requests for reasonable accommodations involve one animal, requests sometimes involve more than one animal (for example, a person has a disability-related need for both animals, or two people living together each have a disability-related need for a separate assistance animal). The decision-making process in Notice FHEO 2020-01 should be used in accordance with the reasonable accommodation policies in Chapter 2 for all requests for exceptions or modifications to the PHA's rules, policies, practices, and procedures so that persons with disabilities can have assistance animals in the housing where they reside.

PHAs have the authority to regulate service animals and assistance animals under applicable federal, state, and local law [24 CFR 5.303(b)(3); 960.705(b)(3)].

#### **PHA Policy**

For an animal to be considered a service animal, it must be a trained dog, and there must be a person with disabilities in the household who requires the dog's services.

For an animal to be considered a support animal, there must be a person with disabilities in the household, there must be a disability-related need for the animal, and the family must request and the PHA approve a reasonable accommodation in accordance with the criteria outlined in Notice FHEO 2020-01 and the policies contained in Chapter 2.

Service animals and assistance animals are subject to provisions of the lease and pet policy related to pet registration with property management, any required notification to the PHA, care and handling, and adherence to the lease and house rules, unless the PHA grants a specific exemption to the lease and/or pet policies through the reasonable accommodation process.

### ***10-I.C. Care and Handling***

HUD regulations do not affect any authority a PHA may have to regulate assistance animals under federal, state, and local law [24 CFR 5.303; 24 CFR 960.705].

#### **PHA Policy**

Residents must care for assistance animals in a manner that complies with state and local laws, including anti-cruelty laws.

Residents must ensure that assistance animals do not pose a direct threat to the health or safety of others, or cause substantial physical damage to the development, dwelling unit, or property of other residents.

When a resident's care or handling of an assistance animal violates these policies, the PHA will consider whether the violation could be reduced or eliminated by a reasonable accommodation.



If the PHA determines that no such accommodation can be made, the PHA may withdraw the approval of a particular assistance animal.

The Resident will immediately notify the Department of Housing Services of any personal injury or property damage caused by any pet or assistance animal.

## **PART II: Pet Policies for All Developments**

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

### ***10-II.A. Overview***

The purpose of a pet policy is to establish clear guidelines for ownership of pets and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. It also establishes reasonable rules governing the keeping of common household pets. This part contains pet policies that apply to all developments.

### ***10-II.B. Management Approval of Pets***

#### **Registration of Pets**

PHAs may require registration of the pet with the PHA [24 CFR 960.707(b)(5)].

#### **PHA Policy**

1. Prior to a pet being allowed to reside in a unit, the proposed pet owner must contact the PHA and request consideration to have a pet.
2. In addition, the Resident must provide to the PHA documented acceptability in accordance with the provisions outlined in the "Standards" section of this chapter.
3. Pets must be registered with PHA before the pet is brought onto the premises and the registration may be reviewed/updated by the PHA at its discretion.
4. The PHA may give temporary approval for a pet to be on the premises prior to registration.
5. Registration includes:
  - a. A certificate (Category I pet only) signed by a licensed veterinarian or designated State or local authority, stating that:
    - i. The pet has received all inoculations required by State or local law.
    - ii. The animal is in good health. It has no communicable diseases or pests, and in the case of dogs and cats, is spayed or neutered. For dogs, verification of the current weight and expected adult weight and size must also be provided.
    - iii. Verification that the animal is licensed in accordance with applicable State and local laws and regulations.
    - iv. A photo (Category I pet only) and sufficient information to identify the animal and demonstrate it is a common household pet.

- v. Provision of the name, address, and phone number of one or more "Responsible Party(s)" to care for the pet if the owner dies, is incapacitated or unavailable to care for the pet
  - vi. Execution of a Pet Agreement stating that the Resident accepts complete responsibility for the care and cleaning of the pet and acknowledges the applicable rules. These requirements may not conflict with State or local law.
6. An animal's temperament may be considered as a factor in determining the prospective owner's ability to comply with the Pet Rules and Policies and other lease obligations. Dogs or cats having a history of, or exhibiting aggressive, intimidating, territorial or inappropriate behavior will not be approved.
7. A Resident who cares for another Resident's pet must notify the PHA in writing that they will be caring for the pet and are willing to abide by all the Pet Rules and Policies.
8. The discovery of any unauthorized pets, meaning any animals that are on the premises that do not have a corresponding pet agreement, will be addressed as follows:
  - a. If the animal meets the requirements for pets within public housing, the PHA may, at its discretion, offer the Resident the opportunity to sign a Pet Agreement, pay the applicable deposit, and keep the unauthorized pet.
  - b. If the animal is of a type or weight such that it is not allowed in public housing, or if the Resident is prohibited from having the animal because they already have the maximum number of animals allowed or have had past problems with pets, the PHA may issue a termination notice requiring the Resident to provide verification that they have found another home for the unauthorized animal.

## **Refusal to Register Pets**

### **PHA Policy**

The PHA shall refuse to register a pet if:

- The pet is not a common household pet identified more specifically in this policy;
- The Resident fails to provide complete pet registration information or fails to update the registration as requested by the PHA; or,
- If the PHA reasonably determines, based on the Resident's habits and practices, that the Resident will be unable to keep the pet in compliance with the Pet Rules and Policies and other lease obligations.

If the PHA refuses to register a pet, a written notification will be sent to the pet owner within 10 business days of the PHA'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 PHA's grievance procedures.

## **Pet Agreement**

### **PHA Policy**

Residents who have been approved to have a pet must enter into a pet agreement with the PHA, 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 PHA's pet policy and applicable house rules, that he or she has read the policies and/or rules, understands them, and agrees to comply with them.

The resident further certifies by signing the pet agreement that he or she understands that noncompliance with the PHA's pet policy and applicable house rules may result in the withdrawal of PHA approval of the pet or termination of tenancy.

### **10-II.C. Standards for Pets**

[24 CFR 5.318; 960.707(b)]

PHAs may establish reasonable requirements related to pet ownership including, but not limited to:

- Limitations on the number of animals in a unit, based on unit size
- Prohibitions on types of animals that the PHA classifies as dangerous, provided that such classifications are consistent with applicable state and local law
- Prohibitions on individual animals, based on certain factors, including the size and weight of the animal
- Requiring pet owners to have their pets spayed or neutered

PHAs may not require pet owners to have any pet's vocal cords removed.

#### **Definition of "Common Household Pet"**

There is no regulatory definition of common household pet for public housing programs, although the regulations for pet ownership in both elderly/disabled and general occupancy developments use the term. The regulations for pet ownership in elderly/disabled developments expressly authorize PHAs to define the term [24 CFR 5.306(2)].

#### **PHA Policy**

##### **Common Household Pets**

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 for pleasure rather than commercial purposes.

##### **Dangerous or Exotic Animals**

Any animals which are of a wild or predatory nature, and which because of their size, vicious nature, or other characteristics, would constitute an unreasonable danger to human life or property. A dangerous or exotic animal shall include any of the following:

- (a) Any large felid from the genus *Panthera*, including: lion, tiger, leopard, snow leopard, puma, cougar, mountain lion, clouded leopard, and cheetah.
- (b) Any monkey, ape, gorilla, hybrid thereof, or other non-human primate.

- (c) Any bear.
- (d) Any venomous or poisonous animal(s) or insect(s).
- (e) Any reptile of the order Crocodylia (crocodiles, alligators, caimans) or any snake of the family Pythonidae or Boinae capable of obtaining eight feet or more in length.

Dangerous and/or exotic animals are not considered "common household pets" and are not permissible pets under this policy.

## ***Pet Restrictions***

### **PHA Policy**

#### **Types of Pets**

For the purpose of this policy, there are two categories of pets allowed:

Category I: Dog (a.) or Cat (b.)

Category II: Bird (c.), Fish (d.), Rodents (e.), and Reptiles/Insects (f)

Residents may not keep wild or feral animals, farm animals, primates, ferrets, pot-bellied pigs or animals used for breeding or to produce offspring for sale.

#### **Category I Pets**

Common household pets, as outlined below, will be permitted under the following guidelines (with the exception of service/assistance animals, as defined in ORS 346.690, or companion animals allowed as a Reasonable Accommodation related to a Resident's or prospective Resident's disability):

- a. Dogs - Maximum number - one (1)
  - Must not exceed adult weight of 25 lbs. or adult shoulder height of 15"
  - Must be housebroken within 8 weeks of approval or 6 months of age
  - Must be spayed or neutered
  - Must have any or all inoculations specified now or in the future by State law or local ordinance
  - Must be licensed as specified now or in the future by State law or local ordinance
  - Must wear a collar/tag with identification that allows the animal to be traced back to the Resident. Animal name only is not sufficient identification.
  - Must not be kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surroundings.
  - The following breeds or mixed breeds of dogs will be excluded from approval: German Shepherd, Rottweiler, Doberman Pinscher, Pit Bull or Bull Terrier, Chow & Spitz.
- b. Cats (Domestic Only) - Maximum number - one (1)
  - Must be spayed or neutered
  - Must have any or all inoculations specified now or in the future by State law or local ordinance
  - Must be trained to use a plastic litter box or other non-porous waste receptacle within 8 weeks of approval or 6 months of age

- Must be licensed as specified now or in the future by State law or local ordinance
- Must wear a collar/tag with identification that allows the animal to be traced back to the Resident. Animal name only is not sufficient identification.
- Must not be kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surroundings.

### **Category II Pets**

- c. Birds - Maximum number - two (2)
  - Must be caged at all times
  
- d. Fish - Maximum number = one (1) aquarium
  - Maximum aquarium size - 20 gallons
  - Must be kept on an approved stand
  
- e. Rodents (ONLY rabbit, guinea pig, hamster, gerbil, sugar glider, or hedgehog) - Maximum number - one (1)
  - Must be caged at all times
  - Must have any or all inoculations specified now or in the future by State law or local ordinance
  
- f. Reptiles/Insects
  - Must be caged at all times
  - Must have any or all inoculations specified now or in the future by State law or local ordinance
  - Must not be dangerous, poisonous or otherwise deemed a threat to human life, safety, or welfare (such as scorpions, tarantulas, poisonous snakes, etc.)
  - Must not exceed maximum size specified for Category I pets

Only pets specified above may be kept by a Resident. No other pets will be considered common household pets without a modification of these rules by the PHA. Residents may not own or keep wild or feral animals, farm animals, primates, ferrets, pot-bellied pigs or animals used for breeding or to produce offspring for sale.

## **Number of Pets**

### PHA Policy

Only pets specified in this chapter may be kept by a Resident. No other pets will be considered common household pets without a modification of these rules by the PHA. Residents may not own or keep wild or feral animals, farm animals, primates, ferrets, pot-bellied pigs or animals used for breeding or to produce offspring for sale.

Pet Combinations (maximum) a Resident may have:

- One (1) Category I pet type (a, b) & One (1) Category II pet type (c, d, e, f)  
Example: One dog & 2 birds

(OR)

- Two (2) Category II pet types (c, d, e, f)  
Example: 2 birds & fish, or fish and 1 guinea pig

No two Category II pet types can be the same. Example: A Resident may NOT have 2 rodents, or 2 aquariums, or 4 birds.

## ***Other Requirements***

### **PHA Policy**

Dogs and cats must be spayed or neutered at the time of registration or, in the case of underage animals, within 30 days of the pet reaching 6 months of age. Exceptions may be made upon veterinary certification that subjecting this particular pet to the procedure would be temporarily or permanently medically unsafe or unnecessary.

Pets must be licensed in accordance with state or local law. Residents must provide proof of licensing at the time of registration and annually, in conjunction with the resident's annual reexamination.

## ***10-II.D. Pet Rules***

Pet owners must maintain pets responsibly, in accordance with PHA 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**

### **PHA Policy**

Pets must be maintained within the resident's unit. When outside of the unit (within the building or on the grounds) dogs and cats must be kept on a leash or carried and under the control of the resident or other responsible individual at all times.

Pets other than dogs or cats must be kept in a cage or carrier when outside of the unit.

Pets are not permitted in common areas including lobbies, community rooms and laundry areas except for those common areas which are entrances to and exits from the building.

Pet owners are not permitted to exercise pets or permit pets to deposit waste on project premises outside of the areas designated for such purposes.

## **Designated Pet/No-Pet Areas**

[24 CFR 5.318(g), PH Occ GB, p. 182]

PHAs may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Pet rules may also designate buildings, floors of building, or sections of building for residency by pet-owning tenants.

PHAs may direct initial tenant moves as may be necessary to establish pet and no-pet areas. The PHA may not refuse to admit, or delay admission of, an applicant on the grounds that the applicant's admission would violate a pet or no-pet area. The PHA may adjust the pet and no-pet areas or may

direct such additional moves as may be necessary to accommodate such applicants for tenancy or to meet the changing needs of the existing tenants.

PHAs may not designate an entire development as a no-pet area, since regulations permit residents to own pets.

#### **PHA Policy**

With the exception of common areas as described in the previous policy, the PHA has not designated any buildings, floors of buildings, or sections of buildings as no-pet areas. In addition, the PHA has not designated any buildings, floors of buildings, or sections of buildings for residency of pet-owning tenants.

### **Cleanliness**

#### **PHA Policy**

The pet owner shall be responsible for the removal of waste from the exercise area by placing it in a sealed plastic bag and disposing of it in the appropriate waste receptacle.

The pet owner shall take adequate precautions to eliminate any pet odors within or around the unit and to maintain the unit in a sanitary condition at all times.

Litter box requirements:

- Pet owners must promptly dispose of waste from litter boxes and must maintain litter boxes in a sanitary manner.
- Litter shall not be disposed of by being flushed through a toilet.
- Litter boxes shall be kept inside the resident's dwelling unit.

### **Alterations to Unit**

#### **PHA Policy**

Pet owners shall not alter their unit, patio, premises or common areas to create an enclosure for any animal.

Installation of pet doors is prohibited.

### **Noise**

#### **PHA Policy**

Pet owners must agree to control the noise of pets so that such noise does not constitute a nuisance to other residents or interrupt their peaceful enjoyment of their housing unit or premises. This includes, but is not limited to loud or continuous barking, howling, whining, biting, scratching, chirping, or other such activities.

### **Pet Care**

#### **PHA Policy**

Each pet owner shall be responsible for adequate care, nutrition, exercise and medical attention for his/her pet.

Each pet owner shall be responsible for appropriately training and caring for his/her pet to ensure that the pet is not a nuisance or danger to other residents and does not damage PHA property.



No animals may be tethered or chained inside or outside the dwelling unit at any time.

## **Responsible Parties**

### **PHA Policy**

The pet owner will be required to designate two responsible parties for the care of the pet if the health or safety of the pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet.

A resident who cares for another resident's pet must notify the PHA and sign a statement that they agree to abide by all of the pet rules.

## **Pets Temporarily on the Premises**

### **PHA Policy**

Pets that are not owned by a Resident are not allowed on the premises or in vehicles parked at the property. This includes animals belonging to guests of a Resident. Residents are prohibited from feeding or harboring stray animals.

This rule does not apply to visiting pet programs sponsored by a humane society or other non-profit organizations, and approved by the PHA.

## **Pet Rule Violations**

### **PHA Policy**

All complaints of cruelty and all dog bites will be referred to animal control or an applicable agency for investigation and enforcement.

If a determination is made on objective facts supported by written statements, that a resident/pet owner has violated the pet rules, written notice will be served.

The notice will contain a brief statement of the factual basis for the determination and the pet rule(s) that were violated. The notice will also state:

- That the pet owner has 10 business days from the effective date of the service of notice to correct the violation or make written request for an informal review to discuss the violation
- That the pet owner is entitled to be accompanied by another person of his or her choice at the informal review
- That the pet owner's failure to correct the violation, request an informal review, or appear at a requested informal review may result in initiation of procedures to remove the pet, or to terminate the pet owner's tenancy

## **Notice for Pet Removal**

### **PHA Policy**

If the pet owner and the PHA 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 PHA, the PHA may serve notice to remove the pet.



The notice will contain:

- A brief statement of the factual basis for the PHA's determination of the pet rule that has been violated
- The requirement that the Resident /pet owner must remove the pet within the time frame on the notice (not less than 14 days)
- A statement that failure to remove the pet may result in the initiation of termination of tenancy procedures

## **Pet Removal**

### **PHA Policy**

If the death or incapacity of the pet owner threatens the health or safety of the pet, or other factors occur that render the owner unable to care for the pet, the situation will be reported to the responsible party designated by the pet owner.

If the responsible party is unwilling or unable to care for the pet, or if the PHA after reasonable efforts cannot contact the responsible party, the PHA may contact the appropriate state or local agency and request the removal of the pet.

## **Termination of Tenancy**

### **PHA Policy**

The PHA may initiate procedures for termination of tenancy based on a pet rule violation if:

- The pet owner has failed to remove the pet or correct a pet rule violation within the time period specified
- The pet rule violation is sufficient to begin procedures to terminate tenancy under terms of the lease

## **Emergencies**

### **PHA Policy**

The PHA 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 PHA 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 PHA's policies for pet deposits and fees in elderly, disabled and mixed population developments. Policies governing deposits and fees in general occupancy developments are described in Part IV.

### **10-III.B. Pet Deposits**

#### **Payment of Deposit**

The PHA may require tenants who own or keep pets in their units to pay a refundable pet deposit. This deposit is in addition to any other financial obligation generally imposed on tenants of the project [24 CFR 5.318(d)(1)].

The maximum amount of pet deposit that may be charged by a PHA on a per dwelling unit basis, is the higher of the total tenant payment (TTP) or such reasonable fixed amount as the PHA may require. The PHA may permit gradual accumulation of the pet deposit by the pet owner [24 CFR 5.318(d)(3)].

The pet deposit is not part of the rent payable by the resident [24 CFR 5.318(d)(5)].

#### **PHA Policy**

Pet owners are required to pay a pet deposit in addition to any other required deposits. The amount of the deposit is \$200 per authorized Category 1 pet, and must be paid in full before the pet is brought on the premises.

A deposit of \$200 may be assessed for some Category 2 pets if the PHA determines there is a likelihood of those pets causing damage to the unit.

#### **Refund of Deposit**

[24 CFR 5.318(d)(1)]

The PHA may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet, including (but not limited to) the costs of repairs and replacements to, and fumigation of, the tenant's dwelling unit. The PHA must refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet in the unit.

#### **PHA Policy**

The PHA will refund the pet deposit to the resident, less the costs of any damages caused by the pet to the dwelling unit, within 31 days of move-out. If the pet is removed from the unit prior to move out, the deposit will be retained until the resident moves from that unit.

The resident will be billed for any amount that exceeds the pet deposit.

The PHA will provide the resident with a written list of any charges against the pet deposit within 31 days of move out as part of the final accounting statement. If the resident disagrees with the charges, the resident may send a written request for review within 17 days of the date on the final accounting letter.

## ***10-III.C. Other Charges***

### **Pet-Related Damages During Occupancy**

#### **PHA Policy**

All reasonable expenses incurred by the PHA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

- The cost of repairs and replacements to the resident's dwelling unit
- Fumigation of the dwelling unit
- Repairs to common areas of the project
- Any additional cleaning/treatment necessary to remove pet odor

The expense of flea elimination shall also be the responsibility of the resident.

If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.G, Maintenance and Damage Charges. Pet deposits will not be applied to the costs of pet-related damages during occupancy.

Charges for pet-related damage, and/or any other financial obligations of the resident, are not part of rent payable by the resident.

### **Pet Waste Removal Charge**

The regulations do not address the PHA's ability to impose charges for house pet rule violations. However, charges for violation of PHA pet rules may be treated like charges for other violations of the lease and PHA tenancy rules.

#### **PHA Policy**

A separate pet waste removal charge of \$10.00 per occurrence will be assessed against pet owners who fail to remove pet waste in accordance with this policy.

Notices of pet waste removal charges will be in accordance with requirements regarding notices of adverse action. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the PHA may not take action for nonpayment of the charge until the conclusion of the grievance process.

Charges for pet waste removal, and/or any other financial obligations of the resident, are not part of rent payable by the resident.

## **PART IV: Pet Deposits and Fees in General Occupancy Developments**

### ***10-IV.A. Overview***

This part describes the PHA's policies for pet deposits and fees for those who reside in general occupancy developments.

## ***10-IV.B. Pet Deposits***

A PHA may require a refundable pet deposit to cover additional costs attributable to the pet and not otherwise covered [24 CFR 960.707(b)(1)].

A PHA that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits, or if there are no such requirements, for rental security deposits, if applicable. The PHA must comply with such laws as to retention of the deposit, interest, and return of the deposit to the resident, and any other applicable requirements [24 CFR 960.707(d)].

### **Payment of Deposit**

#### **PHA Policy**

Pet owners are required to pay a pet deposit of \$300 in addition to any other required deposits. The deposit must be paid in full or a reasonable payment plan established before the pet is brought on the premises.

The pet deposit, and/or any other financial obligations of the resident, is not part of rent payable by the resident.

### **Refund of Deposit**

#### **PHA Policy**

The PHA will refund the pet deposit to the resident, less the costs of any damages caused by the pet to the dwelling unit, within 31 days of move-out from the unit.

The resident will be billed for any amount that exceeds the pet deposit.

The PHA will provide the resident with a written list of any charges against the pet deposit within 31 business days of the move-out inspection. If the resident disagrees with the amount charged to the pet deposit, the PHA will provide a meeting to discuss the charges.

## ***10-IV.C. Non-Refundable Nominal Pet Fee***

PHAs may require payment of a non-refundable nominal pet fee to cover the reasonable operating costs to the development relating to the presence of pets [24 CFR 960.707(b)(1)].

#### **PHA Policy**

The PHA does not require pet owners to pay a non-refundable nominal pet fee.

## ***10-IV.D. Other Charges***

### **Pet-Related Damages During Occupancy**

#### **PHA Policy**

All reasonable expenses incurred by the PHA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

The cost of repairs and replacements to the resident's dwelling unit

Fumigation of the dwelling unit  
Repairs to common areas of the project

The expense of flea elimination shall also be the responsibility of the resident.

If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.G, Maintenance and Damage Charges. Pet deposits will not be applied to the costs of pet-related damages during occupancy.

Charges for pet-related damage, and/or any other financial obligations of the resident, are not part of rent payable by the resident.

### **Pet Waste Removal Charge**

The regulations do not address the PHA's ability to impose charges for house pet rule violations. However, charges for violation of PHA pet rules may be treated like charges for other violations of the lease and PHA tenancy rules.

#### **PHA Policy**

A separate pet waste removal charge of \$25.00 per occurrence will be assessed against pet owners who fail to remove pet waste in accordance with this policy.

Such charges will be due and payable 14 calendar days after billing.

Charges for pet waste removal, and/or any other financial obligations of the resident, are not part of rent payable by the resident.

# Chapter 11: Community Service

## **Introduction**

This chapter explains HUD regulations requiring PHAs to implement a community service program for all nonexempt adults living in public housing.

This chapter describes HUD regulations and PHA 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: PHA Implementation of Community Service. This part provides PHA policy regarding PHA implementation and program design.

## **PART I: Community Service Requirement**

### ***11-I.A. Overview***

HUD regulations pertaining to the community service requirement are contained in 24 CFR 960 Subpart F (960.600 through 960.609). PHAs and residents must comply with the community service requirement, effective with PHA fiscal years that commenced on or after October 1, 2000. Per 903.7(l)(1)(iii), the PHA Plan must contain a statement of how the PHA will comply with the community service requirement, including any cooperative agreement that the PHA has entered into or plans to enter into.

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities [24 CFR 960.601(b)].

In administering community service requirements, the PHA must comply with all nondiscrimination and equal opportunity requirements [24 CFR 960.605(c)(5)].

### ***11-I.B. Requirements***

Each adult resident of the PHA, who is not exempt, must [24 CFR 960.603(a)]:

- Contribute 16 hours per month of community service; or
- Participate in an economic self-sufficiency program (as defined in the regulations) for 8 hours per month; or
- Perform 8 hours per month of combined activities (community service and economic self-sufficiency programs).

#### **PHA Policy**

An individual may not skip a month and then double up the following month, unless special circumstances warrant it. The PHA will make the determination of whether to permit a deviation from the schedule.

Individuals who have special circumstances which they believe will prevent them from completing the required community service hours for a given month must notify the PHA in writing within 5 business days of the circumstances becoming known. The PHA will review the request and notify the individual, in writing, of its determination within 10 business days. The PHA may require those individuals to provide documentation to support their claim.

## **Definitions**

### **Exempt Individual**

[24 CFR 960.601(b), Notice PIH 2009-48]

An exempt individual is an adult who:

- Is age 62 years or older
- Is blind or disabled (as defined under section 216[i][I] or 1614 of the Social Security Act), and who certifies that because of this disability s/he is unable to comply with the service provisions
- Is a primary caretaker of such an individual
- Is engaged in work activities

### **PHA Policy**

The PHA will consider 24 hours per week as the minimum number of hours needed to qualify for a work activity exemption.

- Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program; or
- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such program.

### **Community Service**

[24 CFR 960.601(b), Notice PIH 2009-48]

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.

Eligible community service activities include, but are not limited to, work at:

- Local public or nonprofit institutions such as schools, head start programs, before or after school programs, child care centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food

banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)

- Nonprofit organizations serving PHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts
- PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
- Care for the children of other residents so parent may volunteer

PHAs may form their own policy in regards to accepting community services at profit-motivated entities, acceptance of volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work.

#### **PHA Policy**

The PHA will accept community services at profit-motivated entities, volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work as eligible community service activities.

#### **Economic Self-Sufficiency Program**

[24 CFR 5.603(b), Notice PIH 2009-48]

For purposes of satisfying the community service requirement, an economic self-sufficiency program is defined by HUD as any program designed to encourage, assist, train, or facilitate economic independence of assisted families or to provide work for such families.

Eligible self-sufficiency activities include, but are not limited to:

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any activity required by the Department of Public Assistance under Temporary Assistance for Needy Families (TANF)
- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)



## **Work Activities**

[42 U.S.C. 607(d)]

As it relates to an exemption from the community service requirement, work activities means:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- On-the-job training
- Job search and job readiness assistance
- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any individual)
- Job skills training directly related to employment
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate
- Provision of child care services to an individual who is participating in a community service program

## **Notification Requirements**

[24 CFR 960.605(c)(2), Notice PIH 2009-48]

The PHA 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 PHA verification of exempt status. The PHA must also notify the family of its determination identifying the family members who are subject to the service requirement, and the family members who are exempt. In addition, the family must sign a certification, Attachment A of Notice PIH 2009-48, that they have received and read the policy and understand that if they are not exempt, failure to comply with the requirement will result in nonrenewal of their lease.

### **PHA Policy**

The PHA will provide the family with a copy of the Community Service Policy found in Exhibit 11-1 of this chapter: at lease-up, 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 PHA will notify the family in writing of the family members who are subject to the community service requirement and the family members who are exempt. If the family includes nonexempt individuals the notice will include a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which they may record the activities they perform and the number of hours contributed. The form will also have a place for a signature by an appropriate official, who will certify to the activities and hours completed.

## ***11-I.C. Determination of Exemption Status and Compliance***

[24 CFR 960.605(c)(3)]

The PHA must review and verify family compliance with service requirements annually at least thirty days before the end of the twelve month lease term. The policy for documentation and verification of compliance with service requirements may be found at Section 11-I.D., Documentation and Verification.

### **PHA Policy**

Where the lease term does not coincide with the effective date of the annual reexamination, the PHA will change the effective date of the annual reexamination to coincide with the lease term. In making this change, the PHA will ensure that the annual reexamination is conducted within 12 months of the last annual reexamination.

## **Annual Determination**

### **Determination of Exemption Status**

An exempt individual is excused from the community service requirement [24 CFR 960.603(a)].

#### **PHA Policy**

At least 60 days prior to lease renewal, the PHA 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 PHA 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 PHA will notify the family of its determination in accordance with the policy in Section 11-I.B., Notification Requirements.

### **Determination of Compliance**

The PHA must review resident family compliance with service requirements annually at least 30 days before the end of the twelve month lease term [24 CFR 960.605(c)(3)]. As part of this review, the PHA must verify that any family member that is not exempt from the community service requirement has met his or her service obligation.

#### **PHA Policy**

Approximately 60 days prior to the end of the lease term, the PHA will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement. The family will have 10 business days to submit the PHA required documentation form(s).

If the family fails to submit the required documentation within the required timeframe, or PHA approved extension, the subject family members will be considered noncompliant with community service requirements, and notices of noncompliance will be issued pursuant to the policies in Section 11-I.E., Noncompliance.

## ***Change in Status between Annual Determinations***

### **PHA Policy**

#### **Exempt to Nonexempt Status**

If an exempt individual becomes nonexempt during the twelve month lease term, it is the family's responsibility to report this change to the PHA within 10 business days.

Within 10 business days of a family reporting such a change, or the PHA determining such a change is necessary, the PHA will provide written notice of the effective date of the requirement, a list of types of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which the family member may record the activities performed and number of hours contributed.

The effective date of the community service requirement will be the first of the month following 30 day notice.

#### **Nonexempt to Exempt Status**

If a nonexempt person becomes exempt during the twelve month lease term, it is the family's responsibility to report this change to the PHA within 10 business days. Any claim of exemption will be verified by the PHA in accordance with the policy at 11-I.D., Documentation and Verification of Exemption Status.

Within 10 business days of a family reporting such a change, or the PHA determining such a change is necessary, the PHA will provide the family written notice that the family member is no longer subject to the community service requirement, if the PHA is able to verify the exemption.

The exemption will be effective immediately.

## **11-I.D. Documentation and Verification**

[24 CFR 960.605(c)(4)]

The PHA must retain reasonable documentation of service requirement performance or exemption in participant files.

### ***Documentation and Verification of Exemption Status***

#### **PHA Policy**

All family members who claim they are exempt from the community service requirement will be required to sign the community service exemption certification form found in Exhibit 11-3. The PHA will provide a completed copy to the family and will keep a copy in the tenant file.

The PHA will verify that an individual is exempt from the community service requirement by following the verification hierarchy and documentation requirements in Chapter 7.

The PHA makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with the PHA's determination, s/he can dispute the decision through the PHA's grievance procedures (see Chapter 14).

## ***Documentation and Verification of Compliance***

At each regularly scheduled reexamination, each nonexempt family member presents a signed standardized certification form developed by the PHA of community service and self-sufficiency activities performed over the last 12 months [Notice PIH 2009-48].

If qualifying community service activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide certification to the PHA, signed by the organization, that the family member has performed the qualifying activities [24 CFR 960.607].

### **PHA Policy**

If anyone in the family is subject to the community service requirement, the PHA will provide the family with community service 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 PHA, upon request by the PHA.

If the PHA has reasonable cause to believe that the certification provided by the family is false or fraudulent, the PHA has the right to require third-party verification.

## ***11-I.E. Noncompliance***

### **Initial Noncompliance**

The lease specifies that it is renewed automatically for all purposes, unless the family fails to comply with the community service requirement. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term [24 CFR 960.603(b)].

If the tenant or another family member has violated the community service requirement, the PHA may not renew the lease upon expiration of the twelve-month term of the lease, unless the tenant and any other noncompliant family member enter into a written agreement with the PHA. Under this agreement the tenant or noncompliant family member must agree to cure the noncompliance by completing the additional hours of community service or economic self-sufficiency needed to make up the total number of hours required, over the twelve-month term of the new lease. In addition, all other members of the family who are subject to the service requirement must be currently complying with the service requirement or must no longer be residing in the unit [24 CFR 960.607(c), Notice PIH 2009-48].

### **Notice of Initial Noncompliance**

[24 CFR 960.607(b)]

If the PHA 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 PHA must notify the tenant of this determination.

The notice to the tenant must briefly describe the noncompliance. The notice must state that the PHA will not renew the lease at the end of the twelve-month lease term unless the tenant, and any other noncompliant resident, enter into a written agreement with the PHA to cure the noncompliance, or the family provides written assurance satisfactory to the PHA that the tenant or other noncompliant resident no longer resides in the unit.

The notice must also state that the tenant may request an informal review, per the grievance procedures, on the PHA's determination, in accordance with the PHA's grievance procedures, and that the tenant may exercise any available judicial remedy to seek timely redress for the PHA's nonrenewal of the lease because of the PHA's determination.

#### **PHA Policy**

The notice of initial noncompliance will be sent at least 45 days prior to the end of the lease term.

The family will have 10 business days from the date of the notice of noncompliance to enter into a written agreement to cure the noncompliance over the 12 month term of the new lease, provide documentation that the noncompliant resident no longer resides in the unit, or to request an informal review, per the grievance procedures,.

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 PHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the family member that previously resided with them.

If the family does not request an informal review, per the grievance procedures,, or does not take either corrective action required by the notice of noncompliance within the required 10 business day timeframe, the PHA will terminate tenancy in accordance with the policies in Section 13-IV.D.

### **Continued Noncompliance**

[24 CFR 960.607(b)]

If, after the 12 month cure period, the family member is still not compliant, the PHA must terminate tenancy of the entire family, according to the PHA's lease, unless the family provides documentation that the noncompliant resident no longer resides in the unit.

#### **PHA Policy**

Notices of continued noncompliance will be sent at least 60 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 Section 13-IV.D, Form, Delivery, and Content of the Notice.

The family will have 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 an informal review, per the grievance procedures,.

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 PHA 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 an informal review, per the grievance procedures,, or provide such documentation within the required 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 2009-48]

PHAs are required to initiate due process (see 24 CFR 966.53(c)) against households failing to comply with lease requirements including the community service and self-sufficiency requirement.

When initiating due process, the PHA must take the following procedural safeguards:

- Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
- Right of the tenant to be represented by counsel
- Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense which the tenant may have
- A decision on merits

## **PART II: Implementation of Community Service**

### ***11-II.A. Overview***

Each PHA must develop a policy for administration of the community service and economic self-sufficiency requirements for public housing. It is in the PHA's best interests to develop a viable, effective community service program, to provide residents the opportunity to engage in the community and to develop competencies.

### **PHA Implementation of Community Service**

The PHA may not substitute any community service or self-sufficiency activities performed by residents for work ordinarily performed by PHA employees, or replace a job at any location where residents perform activities to satisfy the service requirement [24 CFR 960.609].

#### **PHA Policy**

The PHA will notify its insurance company if residents will be performing community service at the PHA. In addition, the PHA will ensure that the conditions under which the work is to be performed are not hazardous.

If a disabled resident certifies that s/he is able to perform community service, the PHA will ensure that requests for reasonable accommodation are handled in accordance with the policies in Chapter 2.

## **PHA Program Design**

The PHA may administer qualifying community service or economic self-sufficiency activities directly, or may make community service activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions [24 CFR 960.605(b)].

### **PHA Policy**

The PHA will attempt to provide the broadest choice possible to residents as they choose community service activities.

The PHA's goal is to design a service program that gives residents viable opportunities to become involved in the community and to gain competencies and skills. The PHA will work with resident organizations and community organizations to design, implement, assess and recalibrate its community service program.

The PHA will make every effort to identify volunteer opportunities throughout the community, especially those in proximity to public housing developments. To the greatest extent possible, the PHA will provide names and contacts at agencies that can provide opportunities for residents, including persons with disabilities, to fulfill their community service obligations.

Any written agreements or partnerships with contractors and/or qualified organizations, including resident organizations, are described in the PHA Plan.

The PHA will provide in-house opportunities for volunteer work or self-sufficiency programs when possible.

When the PHA has a ROSS program, a ROSS Service Coordinator, or an FSS program, the PHA will coordinate individual training and service plans (ITSPs) with the community service requirement. Regular meetings with PHA coordinators will satisfy community service activities and PHA coordinators will verify community service hours within individual monthly logs.



## **EXHIBIT(S)**

### ***EXHIBIT 11-1: Community Service and Self-Sufficiency Policy***

#### A. Background

The Quality Housing and Work Responsibility Act of 1998 requires that all nonexempt (see definitions) public housing adult residents (18 or older) contribute eight (8) hours per month of community service (volunteer work) or participate in eight (8) hours of training, counseling, classes or other activities that help an individual toward self-sufficiency and economic independence. This is a requirement of the public housing lease.

#### B. Definitions

***Community Service*** – community service activities include, but are not limited to, work at:

- Local public or nonprofit institutions such as schools, head start programs, before or after school programs, child care centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)
- Nonprofit organizations serving PHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children’s recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts
- PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA’s insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
- Care for the children of other residents so parent may volunteer

Note: Political activity is excluded.

***Self-Sufficiency Activities*** – self-sufficiency activities include, but are not limited to:

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any activity required by the Department of Public Assistance under Temporary Assistance for Needy Families (TANF)
- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)

***Exempt Adult*** – an adult member of the family who meets any of the following criteria:



- Is 62 years of age or older
- Is blind or a person with disabilities (as defined under section 216[i][I] or 1614 of the Social Security Act), and who certifies that because of this disability he or she is unable to comply with the service provisions, or is the primary caretaker of such an individuals
- Is engaged in work activities
- Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program; or
- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such program.

**Work Activities** – as it relates to an exemption from the community service requirement, work activities means:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- On-the-job training
- Job search and job readiness assistance
- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any individual)
- Job skills training directly related to employment
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate
- Provision of child care services to an individual who is participating in a community service program

C. Requirements of the Program

1. The eight (8) hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.
2. At least eight (8) hours of activity must be performed each month. An individual may not skip a month and then double up the following month, unless special circumstances warrant special consideration. The housing authority will make the determination of whether to allow or disallow a deviation from the schedule based on a family's written request.
3. Family obligation:
  - At lease execution, all adult members (18 or older) of a public housing resident family must:
    - Sign a certification (Attachment A) that they have received and read this policy and understand that if they are not exempt, failure to comply with the community service requirement will result in a nonrenewal of their lease; and

- Declare if they are exempt. If exempt, they must complete the Exemption Form (Exhibit 11-3) and provide documentation of the exemption.
  - Upon written notice from the PHA, nonexempt family members must present complete documentation of activities performed during the applicable lease term. This documentation will include places for signatures of supervisors, instructors, or counselors, certifying to the number of hours contributed.
  - If a family member is found to be noncompliant at the end of the 12-month lease term, he or she, and the head of household, will be required to sign an agreement with the housing authority to make up the deficient hours over the next twelve (12) month period, or the lease will be terminated.
4. Change in exempt status:
- If, during the twelve (12) month lease period, a nonexempt person becomes exempt, it is his or her responsibility to report this to the PHA and provide documentation of exempt status.
  - If, during the twelve (12) month lease period, an exempt person becomes nonexempt, it is his or her responsibility to report this to the PHA. Upon receipt of this information the PHA will provide the person with the appropriate documentation form(s) and a list of agencies in the community that provide volunteer and/or training opportunities.

D. Authority Obligation

1. To the greatest extent possible and practicable, the PHA will:
  - Provide names and contacts at agencies that can provide opportunities for residents, including residents with disabilities, to fulfill their community service obligations.
  - Provide in-house opportunities for volunteer work or self-sufficiency activities.
2. The PHA will provide the family with a copy of this policy, and all applicable exemption verification forms and community service documentation forms, at lease-up, lease renewal, when a family member becomes subject to the community service requirement during the lease term, and at any time upon the family's request.
3. Although exempt family members will be required to submit documentation to support their exemption, the PHA will verify the exemption status in accordance with its verification policies. The PHA will make the final determination as to whether or not a family member is exempt from the community service requirement. Residents may use the PHA's grievance procedure if they disagree with the PHA's determination.
4. Noncompliance of family member:
  - At least thirty (30) days prior to the end of the 12-month lease term, the PHA will begin reviewing the exempt or nonexempt status and compliance of family members;
    - The PHA will secure a certification of compliance from nonexempt family members (Attachment B).
  - If, at the end of the initial 12-month lease term under which a family member is subject to the community service requirement, the PHA finds the family member to be noncompliant, the PHA will not renew the lease unless:
    - The head of household and any other noncompliant resident enter into a written agreement with the PHA, to make up the deficient hours over the next twelve (12) month period; or
    - The family provides written documentation satisfactory to the PHA that the noncompliant family member no longer resides in the unit.

- If, at the end of the next 12-month lease term, the family member is still not compliant, a 30-day notice to terminate the lease will be issued and the entire family will have to vacate, unless the family provides written documentation satisfactory to the PHA that the noncompliant family member no longer resides in the unit;
- The family may use the PHA's grievance procedure to dispute the lease termination.

All adult family members must be provided with a copy of this policy, and must sign a certification that they have read and received a copy of the Community Service and Self-Sufficiency Policy.

## ***EXHIBIT 11-2: Definition Of a Person With A Disability Under Social Security Acts 216(I)(L) and Section 1416(Excerpt) For Purposes Of Exemption From Community Service***

### **Social Security Act:**

216(i)(1): Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

Section 1416 (excerpt):

SEC. 1614. [42 U.S.C. 1382c] (a)(1) For purposes of this title, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or

(ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

Proposed

### ***EXHIBIT 11-3: PHA Determination of Exemption For Community Service***

Family: \_\_\_\_\_

Adult Family Member: \_\_\_\_\_

This adult family member meets the requirements for being exempted from the PHA's community service requirement for the following reason:

- o 62 years of age or older (Documentation of age in file)
- o Is a person with disabilities and self-certifies below that he or she is unable to comply with the community service requirement (Documentation of HUD definition of disability in file)

Tenant certification: I am a person with disabilities and am unable to comply with the community service requirement.

\_\_\_\_\_  
Signature of Family Member Date

- o Is the primary caretaker of such an individual in the above category. (Documentation in file)
- o Is engaged in work activities (Verification in file)
- o Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program (Documentation in file)
- o Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such program (Documentation in file)

\_\_\_\_\_  
Signature of Family Member Date

\_\_\_\_\_  
Signature of PHA Official Date

# Chapter 12: Transfer Policy

## **Introduction**

This chapter explains the PHA's transfer policy, based on HUD regulations, HUD guidance, and PHA policy decisions.

This chapter describes HUD regulations and PHA 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: PHA Required Transfers. This part describes types of transfers that may be required by the PHA, notice requirements, and payment of transfer costs.

Part III: Transfers Requested by Residents. This part describes types of transfers that may be requested by residents, eligibility requirements, security deposits, payment of transfer costs, and handling of transfer requests.

Part IV: Transfer Processing. This part describes creating a waiting list, prioritizing transfer requests, the unit offer policy, examples of good cause, deconcentration, transferring to another development and reexamination.

The PHA may require the tenant to move from the unit under some circumstances. There are also emergency circumstances under which alternate accommodations for the tenant must be provided, that may or may not require a transfer.

The tenant may also request a transfer, such as a request for a new unit as a reasonable accommodation.

The PHA must have specific policies in place to deal with acceptable transfer requests.

## **PART I: Emergency Transfers**

### ***12-IA. Overview***

HUD categorizes certain actions as emergency transfers [PH Occ GB, p. 147]. The emergency transfer differs from a typical transfer in that it requires immediate action by the PHA.

In the case of a genuine emergency, it may be unlikely that the PHA will have the time or resources to immediately transfer a tenant. Due to the immediate need to vacate the unit, placing the tenant on a transfer waiting list would not be appropriate. Under such circumstances, if an appropriate unit is not immediately available, the PHA should find alternate accommodations for the tenant until the emergency passes, or a permanent solution, i.e., return to the unit or transfer to another unit, is reached.

## ***12-I.B. Emergency Transfers***

If the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants, the PHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

### **PHA Policy**

The following is considered an emergency circumstance warranting an immediate transfer of the tenant or family:

Maintenance conditions in the resident's unit, building or at the site that pose an immediate, verifiable threat to the life, health or safety of the resident or family members that cannot be repaired or abated within 24 hours. Examples of such unit or building conditions would include: a gas leak; no heat in the building during the winter; no water; toxic contamination; and serious water leaks.

The resident's unit has been damaged by fire, flood, or other causes to such a degree that the unit is not habitable, provided the damage was not the result of an intentional act, carelessness /or negligence on the part of the resident or a member of the resident's household.

The resident's unit has been damaged by fire, flood or other causes to such a degree that the unit is not habitable, provided that, although the damage was a result of carelessness or negligence of the resident or a member of the resident's household, the resident has, in writing, accepted the responsibility for such damage and has agreed to make restitution to the PHA for the expense of repairing such damage.

## ***12-I.C. Emergency Transfer Procedures***

### **PHA Policy**

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, the PHA will provide temporary accommodations to the tenant by arranging for temporary lodging at a hotel or similar location. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, the PHA will transfer the resident to the first available and appropriate unit after the temporary relocation.

Emergency transfers are mandatory for the tenant.

## ***12-I.D. Costs of Emergency Transfer***

### **PHA Policy**

The PHA will bear the reasonable costs of temporarily accommodating the tenant and of long term transfers, if any, due to emergency conditions, unless the emergency conditions were due to damage as a result of carelessness or negligence of the resident or a member of the resident's household.

In cases where the damage was caused by the resident or a member of their household, the residents may be required to pay all costs associated with the transfer out of pocket, or the PHA may elect to pay some of those costs up front if the tenant enters into a repayment agreement for those costs.

The reasonable cost of transfers includes the cost of packing, moving, and unloading.

The PHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, the PHA will collect information from companies in the community that provide these services.

The PHA will reimburse the family for eligible out-of-pocket moving expenses up to the PHA's established moving allowance.

## **PART II: PHA Required Transfers**

### ***12-II.A. Overview***

HUD regulations regarding transfers are minimal, leaving it up to the PHA to develop reasonable transfer policies.

The PHA may require that a resident transfer to another unit under some circumstances. For example, the PHA may require a resident to transfer to make an accessible unit available to a disabled family. The PHA may also transfer a resident in order to maintain occupancy standards based on family composition. Finally, a PHA may transfer residents in order to demolish or renovate the unit.

A transfer that is required by the PHA is an adverse action, and is subject to the notice requirements for adverse actions [24 CFR 966.4(e)(8)(i)].

### ***12-II.B. Types of PHA Required Transfers***

#### **PHA Policy**

The types of transfers that may be required by the PHA, include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply with occupancy standards, transfers for demolition, disposition, revitalization, or rehabilitation, and emergency transfers as discussed in Part I of this chapter.

Transfers required by the PHA are mandatory for the tenant.

### **Transfers to Make an Accessible Unit Available**

When a family is initially given an accessible unit, but does not require the accessible features, the PHA may require the family to agree to move to a non-accessible unit when it becomes available [24 CFR 8.27(b)].

#### **PHA Policy**

When a non-accessible unit becomes available, the PHA will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. The PHA may wait until a disabled resident requires the accessible unit before transferring the family that does not require the accessible features out of the accessible unit.



## **Occupancy Standards Transfers**

The PHA may require a resident to move when a reexamination indicates that there has been a change in family composition, and the family is either overcrowded or over-housed according to PHA policy [24 CFR 960.257(a)(4)]. On some occasions, the PHA may initially place a resident in an inappropriately sized unit at lease-up, where the family is over-housed, to prevent vacancies. The public housing lease must include the tenant's agreement to transfer to an appropriately sized unit based on family composition [24 CFR 966.4(c)(3)].

### **PHA Policy**

The PHA will transfer a family when the family size has changed and the family is now too large (overcrowded) or too small (over-housed) for the unit occupied.

For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

*Overcrowded:* the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, according to the chart in Section 5-I.B.

*Over-housed:* the family no longer qualifies for the bedroom size in which they are living based on the PHA's occupancy standards as described in Section 5-I.B.

The PHA may also transfer a family who was initially placed in a unit in which the family was over-housed to a unit of an appropriate size based on the PHA's occupancy standards, when the PHA determines there is a need for the transfer.

The PHA may elect not to transfer an over-housed family in order to prevent vacancies.

A family that is required to move because of family size will be advised by the PHA that a transfer is necessary and that the family has been placed on the transfer list.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies in Section 5-I.C. will only be required to transfer if it is necessary to comply with the approved exception.

## **Demolition, Disposition, Revitalizations, or Rehabilitation Transfers**

These transfers permit the PHA to demolish, sell or do major capital or rehabilitation work at a building site [PH Occ GB, page 148].

### **PHA Policy**

The PHA will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. The PHA's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if allowed under Relocation Act provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

### ***12-II.C. Adverse Action***

[24 CFR 966.4(e)(8)(i)]

A PHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests an informal review, per the grievance procedures, within the required timeframe, the PHA may not take action on the transfer until the conclusion of the grievance process.

### ***12-II.D. Cost of PHA Required Transfer***

#### **PHA Policy**

The PHA will bear the reasonable costs of transfers that the PHA requires, except that residents will be required to bear the cost of occupancy standards transfers.

The reasonable costs of transfers include the cost of packing, moving, and unloading.

The PHA will compensate the family for moving costs according to the Uniform Relocation Act. This is an all-inclusive reimbursement.

## **PART III: Transfers Requested By Tenants**

### ***12-III.A. Overview***

HUD provides the PHA with discretion to consider transfer requests from tenants. The only requests that the PHA is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of the PHA. To avoid administrative costs and burdens, this policy limits the types of requests that will be considered by the PHA.

Some transfers that are requested by tenants should be treated as higher priorities than others due to the more urgent need for the transfer.

### ***12-III.B. Types of Resident Requested Transfers***

#### **PHA Policy**

The types of requests for transfers that the PHA 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 PHA's occupancy standards. Transfer requests will be reviewed and considered on a case by case basis.

The PHA 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 PHA'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 PHA 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 PHA's definition of overcrowded, as long as the family meets the PHA's occupancy standards for the requested size unit.
- When the head of household or spouse is employed 25 miles or more from the public housing unit, has no reliable transportation, and public transportation is not adequate.

Transfers requested by the tenant are considered optional for the tenant.

### ***12-III.C. Eligibility for Transfer***

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, the PHA may establish other standards for considering a transfer request [PH Occ GB, p. 150].

#### **PHA Policy**

Except where reasonable accommodation is being requested, the PHA will only consider transfer requests from residents that meet the following requirements:

- Have not engaged in criminal activity that threatens the health and safety of residents and staff
- Owe no back rent or other charges, or have a pattern of late payment
- Have no housekeeping lease violations or history of damaging property
- Can get utilities turned on in the name of the head of household (applicable only to properties with tenant-paid utilities)

A resident with housekeeping standards violations will not be transferred until the resident attends a housekeeping education session with their case manager and passes a follow-up housekeeping inspection.

Exceptions to the good record requirement may be made when it is to the PHA's advantage to make the transfer.

If a family requested to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, or accepts such a unit at admission, 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**

#### **PHA Policy**

When the resident transfers from one unit to another, the security deposit will be refunded as appropriate based on the move out condition of their old unit. The tenant will be liable for a security deposit at their new unit according to the aforementioned security deposit schedule. The deposit for their new unit will be due within 30 days of their transfer.

### **12-III.E. Cost of Tenant Requested Transfer**

The PHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident's disability [Notice PIH 2006-13].

#### **PHA Policy**

The resident will bear all of the costs of a tenant requested transfer, except when the transfer is requested as part of a reasonable accommodation and is required to allow the resident to overcome a barrier to housing.

### **12-III.F. Handling of Requests**

#### **PHA Policy**

Residents requesting a transfer to another unit or development will be required to submit a written request for transfer.

In case of a reasonable accommodation transfer, the PHA will encourage the resident to make the request in writing using a reasonable accommodation request form. If, for any reason, the resident is unable to make the reasonable accommodation request in writing, the PHA will assist the resident in completing the appropriate form and submitting it.

The PHA will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family.

If the family does not meet the "good record" requirements under Section 12-III.C., the manager will address the problem and, until resolved, the request for transfer will be denied.

The PHA will respond within ten (10) business days of the submission of the family's request. If the PHA denies the request for transfer, the family will be informed of its grievance rights.

## **PART IV: Transfer Processing**

### **12-IV.A. Overview**

Generally, transfers should be placed on a transfer list and handled in the appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience disparate treatment.

### **12-IV.B. Transfer List**

PHA Policy

The PHA will maintain a centralized transfer list to ensure that transfers are processed in the correct order and that procedures are uniform across all properties.

Emergency transfers will not automatically go on the transfer list. Instead emergency transfers will be handled immediately, on a case by case basis. If the emergency will not be finally resolved by a temporary accommodation, and the resident requires a permanent transfer, that transfer will be placed at the top of the transfer list.

Transfers will be processed in the following order:

- Emergency transfers (hazardous maintenance conditions)
- High-priority transfers (verified medical condition, threat of harm or criminal activity, and reasonable accommodation)
- Transfers to make accessible units available
- Demolition, renovation, etc.
- Occupancy standards
- Other PHA-required transfers
- Other tenant-requested transfers

Within each category, transfers will be processed in order of the date a family was placed on the transfer list, starting with the earliest date.

With the approval of the executive director, the PHA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow the PHA to meet the demolition or renovation schedule.

### ***12-IV.C. Transfer Offer Policy***

#### **PHA Policy**

Residents will receive one offer of a transfer.

When the transfer is required by the PHA, refusal of that offer without good cause will result in lease termination.

When the transfer has been requested by the resident, refusal of that offer without good cause will result in the family's name being moved to the bottom of the transfer wait list.

### ***12-IV.D. Good Cause for Unit Refusal***

#### **PHA Policy**

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

- Inaccessibility to source of employment, education, or job training, children's day care, or an educational program for children with disabilities, so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.

- The family demonstrates to the PHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.
- A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member.
- The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.
- The unit has lead-based paint and the family includes children under the age of six.

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

### ***12-IV.E. Deconcentration***

#### **PHA Policy**

If subject to deconcentration requirements, the PHA will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve the PHA's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

### ***12-IV.F. Reexamination Policies for Transfers***

#### **PHA Policy**

The reexamination date will be changed to the first of the month in which the transfer took place.

# Chapter 13: Lease Terminations

## Introduction

Either party in a lease agreement may terminate the lease under certain circumstances. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program, to assure that qualified families are provided decent, safe, and sanitary housing which is in good repair. The PHA may terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations specify some reasons for which a PHA can terminate a family's lease, and give PHAs authority to determine other reasons.

When determining PHA policy on terminations, state and local landlord-tenant laws must be considered, since such laws could vary from one location to another. These variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern both the family's and PHA'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 PHA places upon families who wish to terminate their lease.

Part II: Termination by PHA - Mandatory. This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by the PHA occurs. This part also includes nonrenewal of the lease for noncompliance with community service requirements.

Part III: Termination by PHA – Other Authorized Reasons. This part describes the PHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes PHAs to terminate. For some of these options HUD requires the PHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options the PHA has full discretion whether to consider the options as just cause to terminate as long as the PHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the PHA may consider in lieu of termination, and the criteria the PHA 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 PHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

## **PART I: Termination by Tenant**

### ***13-1.A. Tenant Chooses to Terminate the Lease***

[24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or the PHA central office or sent by pre-paid first-class mail, properly addressed.

#### **PHA Policy**

If a family desires to move and terminate their tenancy with the PHA, they must give at least 30 calendar days advance written notice to the PHA of their intent to vacate. When a family must give less than 30 days notice due to circumstances beyond their control the PHA, at its discretion, may waive the 30-day requirement.

The notice of lease termination must be signed by the head of household, spouse, or co-head. A notice signed by the head of household is assumed to include all household members unless it specifies otherwise.

PHA may rely on the tenant's notice for termination

## **PART II: Termination By PHA – Mandatory**

### ***13-II.A. Overview***

HUD requires the PHA to terminate the lease in certain circumstances. In other circumstances HUD requires the PHA to establish provisions for lease termination, but it is still a PHA option to determine, on a case-by-case basis, whether termination is warranted. For those tenant actions or failures to act where HUD requires termination, the PHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the PHA to terminate the lease.

### ***13-II.B. Failure to Provide Consent***

[24 CFR 960.259(a) and (b)]

The PHA must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

### ***13-II.C. Failure to Document Citizenship***

[24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]

The PHA must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.



See Chapter 7 for a complete discussion of documentation requirements.

### ***13-II.D. Failure to Disclose and Document Social Security Numbers***

[24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH 2010-3]

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

#### **PHA Policy**

The PHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

If one or more people leave the household and the only remaining household member(s) do not have a valid SSN, the family's tenancy will be terminated.

See Chapter 7 for a complete discussion of documentation and certification requirements.

### ***13-II.E. Failure to Accept The PHA's Offer of a Lease Revision***

[24 CFR 966.4(l)(2)(ii)(E)]

The PHA must terminate the lease if the family fails to accept the PHA's offer of a lease revision to an existing lease, provided the PHA has done the following:

- The revision is on a form adopted by the PHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The PHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The PHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to PHA policies for offering lease revisions.

### ***13-II.F. Methamphetamine Conviction***

[24 CFR 966.4(l)(5)(i)(A)]

The PHA must immediately terminate the lease if the PHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

See Part 13-III.B. below for the HUD definition of premises.

### ***13-II.G. Lifetime Registered Sex Offenders***

[Notice PIH 2012-28]

Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA must immediately terminate assistance for the household member.

In this situation, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household.

### ***13-II.H. Noncompliance with Community Service Requirements***

[24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]

The PHA is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

### ***13-II.I. Death of a Sole Family Member***

[Notice PIH 2010-3]

The PHA must immediately terminate program assistance for deceased single member households.

### ***13-II.J. Over-Income Families***

[24 CFR 960.507; FR Notice 7/26/18; Notice PIH 2023-03; FR Notice 2/14/23]

In the public housing program, an *over-income family* is defined as a family whose income exceeds the over-income limit for 24 consecutive months. When this occurs, the PHA must either:

- Terminate the family's tenancy within six months of the PHA's final notification of the end of the 24-month grace period; or
- Within 60 days of the PHA's final notification of the end of the 24-month grace period or the next lease renewal (whichever is sooner), have the family execute a new lease that is consistent with 24 CFR 960.509 and charge the family a monthly rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit, including amounts from the operating and capital funds.

However, a PHA that owns or operates fewer than 250 public housing units may continue to lease public housing units to families whose incomes exceed the low-income limit at initial occupancy in accordance with 24 CFR 960.503. Otherwise, the PHA must establish a continued occupancy policy for over-income families in the ACOP indicating which of the above will occur.

**PHA Policy**

For families whose income exceeds the over-income limit for 24 consecutive months, the PHA will not terminate the family’s tenancy and will charge the family the alternative non-public housing rent, as well as require the family to sign a new non-public housing lease in accordance with the continued occupancy policies below.

**Over-Income Limit**

[Notice PIH 2023-03]

The PHA must publish over-income limits in their ACOP and update them no later than 60 days after HUD publishes new income limits each year. The over-income limit is calculated by multiplying the very low-income limit (VLI) by 2.4, as adjusted for family size.

**PHA Policy**

The PHA will rely on the following over-income limits. These numbers will be updated within 60 days of HUD publishing new income limits each year and will be effective for all annual and interim reexaminations once these policies have been adopted.

Family Size	1	2	3	4	5	6	7	8
Over-Income Limit	\$99,120	\$113,280	\$127,440	\$141,600	\$153,000	\$164,280	\$175,680	\$186,960

For families larger than eight persons, the over-income limit will be calculated by multiplying the applicable very low-income limit by 2.4.

**Decreases in Income**

[24 CFR 960.507(c)(4)]

If, at any time during the consecutive 24-month period following the initial over-income determination, the PHA determines that the family’s income is below the over-income limit, the PHA’s over-income policies no longer apply to the family. If the PHA later determines that the family’s income exceeds the over-income limit at a subsequent annual or interim reexamination, the family is entitled to a new 24 consecutive month period and new notices under this section.

**PHA Policy**

If, at any time during the 24-month period following the initial over-income determination, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with PHA policy in Chapter 9.

If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification. The PHA will notify the family in writing within 10 business days of the determination that over-income policies no longer apply to them.

**Initial Notice of Over-Income Status**

[24 CFR 960.507(c)(1); Notice PIH 2023-03]

If the PHA determines the family has exceeded the over-income limit during an annual or interim reexamination, the PHA must provide written notice to the family of the over-income determination no

later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit and continuing to do so for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit. Exhibits 13-1 and 13-2 provide sample initial notices based on HUD's model notices.

#### **PHA Policy**

At annual or interim reexamination, if a family's income exceeds the applicable over-income limit, within 10 business days of the determination, the PHA will notify the family in writing of the determination. The notice will state that if the family continues to be over-income for 24 consecutive months, the family will be subject to the PHA's over-income policies. The notice will state that the family may request a hearing if the family disputes the PHA's determination in accordance with PHA policies in Chapter 14. The PHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other impairments.

### **Second Notice of Over-Income Status**

[24 CFR 960.507(c)(2); Notice PIH 2023-03; Notice PIH 2023-27]

The PHA must conduct an income examination 12 months after the initial over-income determination, even if the family is paying flat rent, unless the PHA determined the family's income fell below the over-income limit since the initial over-income determination. This includes when the PHA makes an initial determination that a family is over-income during an interim reexamination. In this case the PHA must conduct a second interim reexamination 12 months after the over-income determination, unless the family's income falls below the over-income limit during the 24-month period. See Chapter 9 for PHA policies on interims for over-income families.

If the PHA determines the family continues to exceed the over-income limit for 12 consecutive months, the PHA must provide written notification of this 12-month over-income determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit for 12 consecutive months and continuing to do so for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families. Additionally, if applicable under PHA policy, the notice must include an estimate (based on current data) of the alternative non-public housing rent for the family's unit. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit. Exhibits 13-3 and 13-4 provide sample 12-month notices based on HUD's model notices.

#### **PHA Policy**

If a family's income continues to exceed the applicable over-income limit after 12 consecutive months, within 10 business days of the determination, the PHA will notify the family in writing of the determination. The notice will state that if the family continues to be over-income for 24 consecutive months, the family will be subject to the PHA's over-income policies. The notice will provide an estimate of the alternative non-public housing rent applicable to the family at the close of the 24 consecutive month period. The notice will also state that the family may request a hearing if the family disputes the PHA's determination in accordance with PHA policies in Chapter 14. The PHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other impairments.

### **Final Notice of Over-Income Status**

[24 CFR 960.507(c)(3) and 960.509; Notice PIH 2023-03; Notice PIH 2023-27]

Unless the PHA determined the family's income fell below the over-income limit since the second over-income determination, the PHA must conduct an income examination 24 months after the initial over-income determination, even if the family is paying flat rent. When a PHA makes an initial determination that a family is over-income during an interim reexamination, the PHA must conduct an interim reexamination 12 months after the over-income determination, and then again 12 months after the second over-income determination, unless the family's income falls below the over-income limit during the 24-month period.

If the family continues to be over-income based on this determination, the PHA must provide written notification of this determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit for 24 consecutive months and that the PHA will follow its continued occupancy policies for over-income families. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit. Exhibits 13-5 and 13-6 provide sample 24-month notices based on HUD's model notices.

#### **PHA Policy**

If a family's income exceeds the applicable over-income limit for 24 consecutive months, the PHA will notify the family in writing of the determination within 10 business days of the date of the determination. The PHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other impairments. The notice will state that the family will be charged the alternative non-public housing rent in accordance with PHA continued occupancy policies and HUD regulations and provide the family's new rent amount.

The notice will also include a new non-public housing lease and inform the family that the lease must be executed by the family and the PHA no later than 60 days from the date of the notice or at the next lease renewal, whichever is sooner. The family will continue to be a public housing program participant until the family executes the new non-public housing lease. The notice will also state that failure to execute the lease within this time period stated in the notice will result in termination of tenancy no more than six months after the date of the notice. The PHA will permit an over-income family to execute a lease beyond this time period, but before termination of tenancy, if the over-income family pays the PHA the total difference between the alternative non-public housing rent and their public housing rent dating back to the point in time that the over-income family was required to execute the new lease.

Once the family signs the new non-public housing lease, the family will no longer be a public housing participant family. The family will no longer be subject to income examinations, are precluded from participating in the resident council, and cannot participate in any programs that are only for public housing or low-income families. The PHA will not provide such families with hearing or grievance rights.

The non-public housing over-income (NPHOI) lease will contain all required provisions listed at 24 CFR 960.509. The initial term of the lease will be for one year. Upon expiration of the initial lease term, the lease will not renew automatically, and subsequent leases will state renewal terms. At any time, the PHA may terminate tenancy in accordance with 24 CFR 960.509(b)(11) and in accordance with state and local law.

Upon execution of the lease, the tenant will be required pay the amount of monthly tenant rent (known as the alternative non-public housing rent) determined by the PHA in accordance with HUD regulations. The PHA will comply with state and local law in giving the tenant written notice stating any changes in the amount of tenant rent. Charges assessed under the lease will be due in accordance with state and local law.

If an NPHOI family subsequently experiences a decrease in income after signing the NPHOI lease, the family may only be readmitted to the public housing program if they once again become an eligible low-income family and reapply to the public housing program.

## **PART III: Termination by PHA – Other Authorized Reasons**

### ***13-III.A. Overview***

Besides requiring PHAs to terminate the lease under the circumstances described in Part II, HUD requires the PHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require PHAs to terminate for such violations in all cases. The PHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the PHA may, as an alternative to termination, require the exclusion of the culpable household member. The PHA must make policy decisions concerning these options.

In addition, HUD authorizes PHAs to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. The PHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of the PHA lease. In the development of the terms of the lease, the PHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords PHAs wide discretion in some areas, a broad range of policies could be acceptable.

The PHA, with some restrictions, also has the option to terminate the tenancies of families who are over income.

The PHA may consider alternatives to termination and must establish policies describing the criteria the PHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the PHA must take when terminating a family's lease.

### ***13-III.B. Mandatory Lease Provisions***

[24 CFR 966.4(l)(5)]

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require PHAs to terminate for such violations in all cases, therefore PHA policies are needed.

#### ***Definitions [24 CFR 5.100]***

The following definitions will be used for this and other parts of this chapter:

*Affiliated individual* is defined in section 16-VII.B.

*Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

*Dating violence* is defined in section 16-VII.B.

*Domestic violence* is defined in section 16-VII.B.

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

*Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.

*Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

*Household* means the family and PHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

*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.

*Sexual assault* is defined in section 16-VII.B.

*Stalking* is defined in section 16-VII.B.

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

## **Drug Crime On or Off the Premises**

[24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

### **PHA Policy**

The PHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

The PHA will consider all credible evidence, including but not limited to, any record of convictions of covered persons related to the drug-related criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

## **Illegal Use of a Drug**

[24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

### **PHA Policy**



The PHA will terminate the lease when the PHA determines that a household member is illegally using a drug or the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months.

The PHA will consider all credible evidence, including but not limited to, any record of convictions of household members related to the use of illegal drugs.

In making its decision to terminate the lease, the PHA will consider its Medical Marijuana Policy (Addendum A to this plan) as well as alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

### **Threat to Other Residents**

[24 CFR 966.4(l)(5)(ii)(A)]

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

#### **PHA Policy**

The PHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises. *Immediate vicinity* means within a three-block radius of the premises.

The PHA will consider all credible evidence, including but not limited to, any record of convictions of covered persons related to the criminal activity.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

### **Alcohol Abuse**

[24 CFR 966.4(l)(5)(vi)(A)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

#### **PHA Policy**

The PHA will terminate the lease if the PHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful



enjoyment of the premises by other residents or by persons residing in the immediate vicinity of the premises.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

### **Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation**

[24 CFR 966.4(l)(5)(vi)(B)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

#### **PHA Policy**

The PHA will terminate the lease if the PHA determines that a household member has furnished false or misleading information, or has failed to provide pertinent information, concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

The PHA will consider all credible evidence, including but not limited to, any record of convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

### **Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions**

[24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations of the lease and grounds for termination. Incidents of actual or threatened domestic violence, dating violence, or stalking may not be

construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking [Pub.L. 109-162].

### **PHA Policy**

The PHA will terminate the lease for the following violations of tenant obligations under the lease:

- Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due);
- Repeated late payment of rent or other charges. Four late payments within a 12 month period shall constitute a repeated late payment.
- Failure to fulfill the following household obligations:
- Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
- Not to provide accommodations for boarders or lodgers
- To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose
- To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease
- To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety
- To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition
- To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner
- To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including any safety systems such as fire extinguishers, smoke detectors, and carbon monoxide detectors.
- To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project
- To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest
- To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition
- In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

### ***13-III.C. Other Authorized Reasons for Termination***

[24 CFR 966.4(l)(2) and (5)(ii)(B)]

HUD authorizes PHAs to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as “other good cause.”

## **Other Good Cause**

[24 CFR 966.4(l)(2)(ii)(B) and (C)]

HUD regulations state that the PHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the PHA to only those examples. The Violence against Women Reauthorization Act of 2005 explicitly prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, or stalking as “other good cause” for terminating the tenancy or occupancy rights of the victim of such violence.

### **PHA Policy**

The PHA will terminate the lease for the following reasons:

- Fugitive Felon or Parole Violator. If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.
- Persons subject to sex offender registration requirement. If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.
- Discovery after admission of facts that made the tenant ineligible
- Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income
- Failure to furnish such information and certifications regarding family composition and income as may be necessary for the PHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size
- Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available
- Failure to permit access to the unit by the PHA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists
- Failure to promptly inform the PHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.
- Failure to abide by the provisions of the PHA pet policy
- If the family has breached the terms of a repayment agreement entered into with the PHA
- If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.
- If a household member has engaged in drug-related or criminal activity that would preclude the household from participation in the Public Housing program under Section 3-III.C.
- If a household member, or their guest or a person under their control, has engaged in or threatened violent or abusive behavior toward PHA personnel.
  - Abusive or violent behavior towards PHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or

oral, that is customarily used to intimidate may be considered abusive or violent behavior.

- Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.
- If a household member, or their guest or a person under their control, engages in any behavior that is discriminatory to other residents, as defined by the Fair Housing Act.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

### **Family Absence from Unit**

[24 CFR 982.551(i)]

It is reasonable that the family may be absent from the public housing unit for brief periods. However, the PHA needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

#### **PHA Policy**

The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose.

If the entire family will be absent from the unit for more than 2 weeks, they must receive prior permission in writing from the PHA. Consent will not be granted to hold the unit for more than 2 consecutive months(60 days) if the entire family will be absent.

Abandonment. If the family appears to have vacated the unit without giving proper notice, the PHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the PHA will secure the unit immediately to prevent vandalism and other criminal activity.

## ***13-III.D. Alternatives to Termination Of Tenancy***

### **Exclusion of Culpable Household Member**

[24 CFR 966.4(l)(5)(vii)(C)]

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that the PHA may consider exclusion of the culpable household member. Such an alternative can be used, by PHA policy, for any other reason where such a solution appears viable.

#### **PHA Policy**

The PHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as

a guest in the assisted unit. The family must present evidence of the former household member's current address upon PHA request.

## **Repayment of Family Debts**

### **PHA Policy**

If a family owes amounts to the PHA, as a condition of continued occupancy, the PHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the PHA of the amount owed. See Chapter 16 for policies on repayment agreements.

## ***13-III.E. Criteria for Deciding To Terminate Tenancy***

A PHA that has grounds to terminate a tenancy is not required to do so, except as explained in Part II of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

## **Evidence**

[24 CFR 982.553(c)]

For criminal activity, HUD permits the PHA to terminate the lease if a preponderance of the evidence indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

### **PHA Policy**

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

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

## **Consideration of Circumstances**

[24 CFR 966.4(l)(5)(vii)(B)]

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the PHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

### **PHA Policy**

The PHA will consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

- The seriousness of the offending action, especially with respect to how it would affect other residents
- The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in section 13-III.F) a victim of domestic violence, dating violence, or stalking
- The effects that the eviction will have on other family members who were not involved in the action or failure to act
- The effect on the community of the termination, or of the PHA's failure to terminate the tenancy
- The effect of the PHA's decision on the integrity of the public housing program
- The demand for housing by eligible families who will adhere to lease responsibilities
- The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action
- The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future
- In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family

### **Consideration of Rehabilitation**

[24 CFR 966.4(l)(5)(vii)(D)]

HUD authorizes PHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

#### **PHA Policy**

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the PHA will consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

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

### **Reasonable Accommodation**

[24 CFR 966.7]

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

#### **PHA Policy**

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, the PHA will determine whether the behavior is related to the disability. If so, upon the family's request, the PHA will determine whether alternative measures are appropriate as a reasonable accommodation. The PHA will only consider accommodations that can reasonably be

expected to address the behavior that is the basis of the proposed lease termination. See Chapter 2 for a discussion of reasonable accommodation.

### **Nondiscrimination Limitation**

[24 CFR 966.4(l)(5)(vii)(F)]

The PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

### ***13-III.F. Prohibition against Terminating Tenancy of Victims of Domestic Violence, Dating Violence, and Stalking***

[24 CFR 5.2005]

The Violence against Women Reauthorization Act of 2005 (VAWA), provides that "criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate family member of the tenant's family is the victim or threatened victim of that abuse."

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed either as serious or repeated violations of the lease by the victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence.

### **Definitions**

For the definitions of domestic violence, dating violence, stalking, and immediate family member, see section 3-III.F.

### **VAWA and Other Laws**

[24 CFR 5.2009, 24 CFR 5.2005(d)]

VAWA does not supersede any other federal, state, or local law that provides greater protection to victims of domestic violence, dating violence, or stalking.

Moreover, VAWA does not limit the PHA's duty to honor court orders issued to protect a victim or to address the distribution of property when a family breaks up.

### **Limits on VAWA Protections**

[24 CFR 5.2005(b), 24 CFR 5.2005(e)]

While VAWA prohibits a PHA from using domestic violence, dating violence, or stalking as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:



- VAWA does not limit a PHA's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, or stalking providing that the PHA does not subject the victim to a more demanding standard than other tenants.
- VAWA does not limit a PHA's authority to terminate the tenancy of any public housing tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated.

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

In order to demonstrate an actual and imminent threat, the PHA must have objective evidence of words, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat, including but not limited to transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat" [24 CFR 5.2005(d)(3)]. Additionally, HUD regulations state that restrictions "predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents" [24 CFR 5.2005(d)(3)].

#### **PHA Policy**

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, or stalking
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within a short period of time
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location

If the tenant wishes to contest the PHA's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.

### **Documentation of Abuse [24 CFR 5.2007]**

#### **PHA Policy**



When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking claims protection under VAWA, the PHA will request in writing that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this ACOP.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the PHA will document the waiver in the individual's file.

## **Terminating or Evicting a Perpetrator of Domestic Violence**

[24 CFR 5.2005(c)]

Although VAWA provides protection from termination for victims of domestic violence, it does not provide protection for perpetrators. In fact, VAWA gives the PHA the explicit authority to bifurcate a lease, or to remove a household member from a lease, "in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant." Specific lease language affirming this authority is not necessary. Further, the authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance [Pub.L. 109-271]. This means that the PHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [3/16/07 Federal Register notice on the applicability of VAWA to HUD programs].

### **PHA Policy**

The PHA will bifurcate a family's lease and terminate the tenancy of a family member if the PHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to the PHA by the victim in accordance with this section. The PHA will also consider the factors in section 13.III.E. Upon such consideration, the PHA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If the PHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If necessary, the PHA will also take steps to ensure that the remaining family members have a safe place to live during the termination process. For example, the PHA may offer the remaining family members another public housing unit, if available; it may help them relocate to a confidential location; or it may refer them to a victim service provider or other agency with shelter facilities.

## **PART IV: Notification Requirements, Eviction Procedures and Record Keeping**

### ***13-IV.A. Overview***

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

### ***13-IV.B. Conducting Criminal Records Checks***

[24 CFR 5.903(e)(ii) and 24 CFR 960.259]

HUD authorizes PHAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. PHA policy determines when the PHA will conduct such checks.

#### **PHA Policy**

The PHA will conduct criminal records checks when it has come to the attention of the PHA, either from local law enforcement or by other means, that an individual has engaged in any criminal activity, including but not limited to, the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

The PHA may not pass along to the tenant the costs of a criminal records check.

### ***13-IV.C. Disclosure of Criminal Records to Family***

[24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]

In conducting criminal records checks, if the PHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if the PHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

#### **PHA Policy**

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the PHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given 10 business days from the date of the PHA notice, to dispute the accuracy and relevance of the information. If the family does not contact the PHA to dispute the

information within that 10 business day period, the PHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

### ***13-IV.D. Lease Termination Notice***

[24 CFR 966.4(l)(3)]

#### **Form, Delivery, and Content of the Notice**

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine PHA documents directly relevant to the termination or eviction. If the PHA does not make the documents available for examination upon request by the tenant, the PHA may not proceed with the eviction [24 CFR 996.4(m)].

When the PHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the PHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

When the PHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or for a drug-related criminal activity on or off the premises.

#### **PHA Policy**

The PHA will deliver all notices of lease termination via first class mail. (For terminations related to domestic violence, see also the policy under "Victim Notification" in section 13-III.F.)

All notices of lease termination will include a statement of the protection against termination provided by the Violence against Women Reauthorization Act of 2005 (VAWA) for victims of domestic violence, dating violence, or stalking. They will also include a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking. Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies in section 13-III.F.

#### **Timing of the Notice**

[24 CFR 966.4(l)(3)(i)]

The PHA must give written notice of lease termination of:

- During the period of time for which HUD determines that a national emergency requires additional time for families to secure federal funding that is available due to a Presidential declaration of a national emergency, at least 30 days from the date the tenant receives the notice in the case of failure to pay rent.
- When such emergency is not present, 14 calendar days in the case of failure to pay rent.
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days)
  - If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened.
  - If any member of the household has engaged in any drug-related criminal activity or violent criminal activity
  - If any member of the household has been convicted of a felony
- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply.

#### **PHA Policy**

The PHA will give written notice of 14 calendar days for nonpayment of rent. For all other lease terminations, the PHA will give 30 days written notice or, if state or local law allows less than 30 days, such shorter notice will be given.

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

### **Notice of Nonrenewal Due to Community Service Noncompliance**

[24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]

When the PHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

#### **PHA Policy**

If after receiving a notice of initial noncompliance the family does not request an informal review per the grievance procedure or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

### **Notice of Termination Based on Citizenship Status**

[24 CFR 5.514 (c) and (d)]

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for the PHA's informal hearing procedures.

### ***13-IV.E. Eviction***

[24 CFR 966.4(l)(4) and 966.4(m)]

Eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The PHA may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

#### **PHA Policy**

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the PHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the PHA will seek the assistance of the court to remove the family from the premises as per state and local law.

The PHA may not proceed with an eviction action if the PHA has not made available the documents to be used in the case against the family and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

### ***13-IV.F. Notification to Post Office***

[24CFR 966.4(l)(5)(iii)(B)]

When the PHA evicts an individual or family for criminal activity, including drug-related criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

### ***13-IV.G. Record Keeping***

For more information concerning general record keeping, see Chapter 16.

#### **PHA Policy**

A written record of every termination and/or eviction will be maintained by the PHA at the development where the family was residing, and will contain the following information:

- Name of resident, number and identification of unit occupied.

- Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently.
- Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)
- Date and method of notifying the resident.
- Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions.

Proposed

# Chapter 14: Grievances and Appeals

## **Introduction**

This chapter discusses grievances and appeals pertaining to PHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

Note that this chapter is not the PHA's grievance procedure. The grievance procedure is a document separate from the ACOP. This chapter of the ACOP provides the policies that drive the grievance procedure.

## **PART I: Informal Hearings for Public Housing Applicants**

### ***14-I.A. Overview***

When the PHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses the PHA policies necessary to respond to applicant appeals through the informal hearing process.

### ***14-I.B. Informal Hearing Process***

[24 CFR 960.208(a) and PH Occ GB, p. 58]

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants in the PHA grievance procedure [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide the applicant a means to hear the details of the reasons for rejection, and an opportunity to present evidence to the contrary if available, and to claim mitigating circumstances if possible.

## **Use of Informal Hearing Process**

While the PHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, the PHA could make the informal hearing process available to applicants who wish to dispute other PHA actions that adversely affect them.

### **PHA Policy**

The PHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

## **Notice of Denial**

[24 CFR 960.208(a)]

The PHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the PHA decision and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.G for details concerning this requirement.

## **Scheduling an Informal Hearing**

### **PHA Policy**

A request for an informal hearing must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's notification of denial of admission.

Except as provided in Section 3-III.F, the PHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.

## **Conducting an Informal Hearing**

[PH Occ GB, p. 58]

### **PHA Policy**

The informal hearing will be conducted by a person other than the one who made the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of the PHA.

The person conducting the informal hearing will make a recommendation to the PHA, but the PHA is responsible for making the final decision as to whether admission should be granted or denied.



## **Informal Hearing Decision**

[PH Occ GB, p. 58]

### **PHA Policy**

The PHA will notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the PHA will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice
- The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in PHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.
- The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny admission.
- If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand, and the family will be so notified.

## **Reasonable Accommodation for Persons with Disabilities**

[24 CFR 966.7]

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the PHA must consider such accommodations. The PHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

## **PART II: Informal Hearings with Regard to Noncitizens**

### ***14-II.A. Hearing and Appeal Provisions for Noncitizens***

[24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

## **Notice of Denial or Termination of Assistance**

[24 CFR 5.514(d)]

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

## **United States Citizenship and Immigration Services Appeal Process**

[24 CFR 5.514(e)]

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and proof of mailing.

### **PHA Policy**

The PHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the PHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document

verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

#### **PHA Policy**

The PHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

### **Informal Hearing Procedures for Applicants**

[24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

#### **Informal Hearing Officer**

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

#### **Evidence**

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

#### **PHA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. (noon) on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

## **Representation and Interpretive Services**

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, the PHA is still obligated to provide oral translation services in accordance with its LEP Plan.

## **Recording of the Hearing**

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

### **PHA Policy**

The PHA will not provide a transcript of an audio taped informal hearing.

## **Hearing Decision**

The PHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

## **Retention of Documents**

[24 CFR 5.514(h)]

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

## **Informal Hearing Procedures for Residents**

[24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the PHA provide a hearing. The request for a hearing must be made either within 30

days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

## **PART III: Grievance Procedures for Public Housing Residents**

### ***14-III.A. Requirements***

[24 CFR 966.52]

PHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PHA action or failure to act involving the lease or PHA policies which adversely affect their rights, duties, welfare, or status.

The PHA grievance procedure must be included in, or incorporated by reference in, the lease.

#### **PHA Policy**

The PHA grievance procedure will be incorporated by reference in the tenant lease.

The PHA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure and providing an opportunity to present written comments. Comments submitted must be considered by the PHA before adoption of any grievance procedure changes by the PHA.

#### **PHA Policy**

Residents and resident organizations will have 30 calendar days to submit written comments regarding proposed changes to the PHA grievance procedure, from the date they are notified of the proposed changes.

The PHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

### ***14-III.B. Definitions***

[24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance** – any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant’s lease or PHA regulations which adversely affect the individual tenant’s rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to the PHA or at the project management office

- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - Right of the tenant to be represented by counsel
  - Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
  - A decision on the merits
- **Hearing Officer/Panel** – a person/panel selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto
- **Tenant** – the adult person (or persons) (other than a live-in aide)
  - Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
  - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit
- **Resident Organization** – includes a resident management corporation

### ***14-III.C. Applicability***

[24 CFR 966.51]

Potential grievances could address most aspects of a PHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to the PHA. It is not applicable to disputes between tenants not involving the PHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the PHA.

If HUD has issued a due process determination, a PHA may exclude from the PHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, PHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, but may use expedited grievance procedures, as described in Section 14-III.E. below, to deal with the first two of the above three categories of lease terminations.

If HUD has issued a due process determination, the PHA may evict through the state/local judicial eviction procedures. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's grievance procedure as described above.

**PHA Policy**

The PHA will follow the HUD Due Process Determination for the State of Oregon, as stated in Legal Opinion GCH-0020, or any subsequent legal opinion issued by HUD that replaces it. Refer to Addendum E to this plan for the complete text of the determination.

See Chapter 13 for related policies on the content of termination notices.

***14-III.D. Informal Settlement of Grievance***

[24 CFR 966.54]

HUD regulations state that any grievance must be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

**PHA Policy**

The PHA will accept requests for an informal settlement of a grievance either orally or in writing, to the PHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request the PHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, the PHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in the PHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

**PHA Policy**

The PHA will prepare a summary of the informal settlement within 5 business days; one copy to be given to the tenant and one copy to be retained in the PHA's tenant file.

For PHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.



## ***14-III.E. Procedures to Obtain a Hearing***

[24 CFR 966.55]

### **Requests for Hearing and Failure to Request**

[24 CFR 966.55(a), (c), and (d)]

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer/panel, the hearing officer/panel may waive this provision [24 CFR 966.55(d)].

The complainant must submit the request in writing for a grievance hearing within a reasonable time after receipt of the summary of informal discussion [24 CFR 966.55(a)]. The request must specify the reasons for the grievance and the action or relief sought.

#### **PHA Policy**

The resident must submit a written request for a grievance hearing to the PHA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the PHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding [24 CFR 966.55(c)].

### **Escrow Deposits**

[24 CFR 966.55(e)]

Before a hearing is scheduled in any grievance involving the amount of rent that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer/panel.

The PHA must waive the requirement for an escrow deposit where the family has requested a financial hardship exemption from minimum rent requirements or is grieving the effect of welfare benefits reduction in calculation of family income [24 CFR 5.630(b)(3)].

Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

#### **PHA Policy**

The PHA will not waive the escrow requirement for grievances involving rent amounts except where required to do so by regulation.

### **Scheduling of Hearings**

[24 CFR 966.55(f)]



If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer/panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate PHA official.

#### **PHA Policy**

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the PHA.

The PHA may wish to permit the tenant to request to reschedule a hearing for good cause.

#### **PHA Policy**

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date.

### **Expedited Grievance Procedure**

[24 CFR 966.55(g)]

The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the PHA, or
- Any drug-related criminal activity on or near such premises

In such expedited grievances, the informal settlement of grievances as discussed in 14-III.D is not applicable.

The PHA may adopt special procedures concerning expedited hearings, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

#### **PHA Policy**

The PHA will follow expedited grievance procedures for any grievance concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the PHA, or any drug-related criminal activity on or near such premises.

Such procedures will provide for an expedited notice of hearing request, an expedited scheduling of the hearing, and for an expedited decision on the grievance. The tenant will have 3 business days to make their hearing request. The hearing officer will have 3 business days to schedule the hearing, and 3 business days to render a decision. All other aspects of the expedited grievance process shall be the same as for other grievances.

### **14-III.F. Selection of Hearing Officer/Panel**

[24 CFR 966.55(b)]

The grievance hearing must be conducted by an impartial person or persons appointed by the PHA, other than the person who made or approved the PHA action under review, or a subordinate of such person.

The PHA must determine the methodology for appointment of the hearing officer and it must be stated in the grievance procedure.

### **14-III.G. Procedures Governing the Hearing**

[24 CFR 966.56]

#### **Rights of Complainant**

[24 CFR 966.56(b)]

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

#### **PHA Policy**

The tenant will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. (noon) on the business day prior to the hearing.

- The right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf.

#### **PHA Policy**

Hearings may be attended by the following applicable persons:

- A PHA representative(s) and any witnesses for the PHA
  - The tenant and any witnesses for the tenant
  - The tenant's counsel or other representative
  - Any other person approved by the PHA as a reasonable accommodation for a person with a disability
- The right to a private hearing unless the complainant requests a public hearing.
  - The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies.
  - A decision based solely and exclusively upon the facts presented at the hearing.

## **Decision without Hearing**

[24 CFR 966.56(c)]

The hearing officer/panel may render a decision without proceeding with the hearing if the hearing officer/panel determines that the issue has been previously decided in another proceeding.

## **Failure to Appear**

[24 CFR 966.56(d)]

If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer/panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the PHA must be notified of the determination by the hearing officer/panel: Provided, That a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

### **PHA Policy**

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 15 minutes. If the tenant appears within 15 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 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 PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

"Good cause" is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

## **General Procedures**

[24 CFR 966.56(e), (f), and (g)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed [24 CFR 966.56(e)].

The hearing must be conducted informally by the hearing officer/panel. The PHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint and question any witnesses. In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings [24 CFR 966.56(f)].

### PHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing.

There are four categories of evidence.

- **Oral evidence:** the testimony of witnesses
- **Documentary evidence:** a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.
- **Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.
- **Real evidence:** A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If the PHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine PHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the PHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The hearing officer/panel must require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer/panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate [24 CFR 966.56(f)].

The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(g)].

### PHA Policy

If the complainant would like the PHA to record the proceedings by audiotape, the request must be made to the PHA by 12:00 p.m. (noon) on the business day prior to the hearing.

## **Accommodations of Persons with Disabilities**

[24 CFR 966.56(h)]

The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of the PHA's responsibilities pertaining to reasonable accommodation.

### ***14-III.H. Decision of the Hearing Officer/Panel***

[24 CFR 966.57]

The hearing officer/panel must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the tenant and the PHA. The PHA must retain a copy of the decision in the tenant's folder. A copy of the decision, with all names and identifying references deleted, must also be maintained on file by the PHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel [24 CFR 966.57(a)].

#### **PHA Policy**

In rendering a decision, the hearing officer will consider the following matters:

- PHA Notice to the Family: The hearing officer will determine if the reasons for the PHA's decision are factually stated in the notice.
- Discovery: The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with PHA policy.
- PHA Evidence to Support the PHA Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the PHA's conclusion.
- Validity of Grounds for Termination of Tenancy (when applicable): The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

The hearing officer will issue a written decision to the family and the PHA no later than 20 business days after the hearing. The report will contain the following information:

- Hearing information:
  - Name of the complainant
  - Date, time and place of the hearing
  - Name of the hearing officer
  - Name of the PHA representative(s)
  - Name of family representative (if any)
  - Names of witnesses (if any)

- **Background:** A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.
- **Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.
- **Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
- **Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision.
- **Order:** The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct the PHA to restore the family's status.

## **Procedures for Further Hearing**

### **PHA Policy**

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PHA will take effect and another hearing will not be granted.

## **Final Decision**

[24 CFR 966.57(b)]

The decision of the hearing officer/panel is binding on the PHA which must take the action, or refrain from taking the action cited in the decision unless the PHA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer/panel is contrary to Federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA

### **PHA Policy**

When the PHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the PHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer/panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].

Proposed

# Chapter 15: Program Integrity

## Introduction

The PHA is committed to ensuring that funds made available to the PHA are spent in accordance with HUD requirements.

This chapter covers HUD and PHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents PHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the PHA must and may take when errors or program abuses are found.

## **PART I: Preventing, Detecting, and Investigating Errors And Program Abuse**

### ***15-I.A. Preventing Errors and Program Abuse***

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and residents with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

#### **PHA Policy**

The PHA anticipates that the vast majority of families and PHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the PHA’s program is administered effectively and according to the highest ethical and legal standards, the PHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

- The PHA will provide each applicant and resident with a copy of “Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.
- The PHA will provide each applicant and 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 PHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.
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- The PHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The PHA will discuss program compliance and integrity issues. At the conclusion of all program orientation sessions, the family representative will be required to sign a program briefing certificate to confirm that all rules and pertinent regulations were explained to them.
- The PHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.
- PHA staff will be required to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.
- The PHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family member.
- The PHA will provide each PHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term error refers to an unintentional error or omission. Program abuse or fraud refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

### ***15-I.B. Detecting Errors and Program Abuse***

In addition to taking steps to prevent errors and program abuse, the PHA will use a variety of activities to detect errors and program abuse.

#### **Quality Control and Analysis of Data**

##### **PHA Policy**

The PHA will employ a variety of methods to detect errors and program abuse, including:

The PHA routinely will use available sources of up-front income verification, including HUD's EIV system, to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The PHA will compare family-reported income and expenditures to detect possible unreported income.

#### **Independent Audits and HUD Monitoring**

Notice PIH 2015-16 requires all PHAs that expend \$750,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the PHA of errors and potential cases of program abuse.

##### **PHA Policy**

The PHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the PHA's error detection and abuse prevention efforts.

## **Individual Reporting of Possible Errors and Program Abuse**

### **PHA Policy**

The PHA will encourage staff, residents, and the public to report possible program abuse.

## ***15-I.C. Investigating Errors and Program Abuse***

### **When the PHA Will Investigate**

#### **PHA Policy**

The PHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the PHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The PHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

### **Consent to Release of Information**

[24 CFR 960.259]

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require applicant/resident families to give consent to the release of additional information.

### **Analysis and Findings**

#### **PHA Policy**

The PHA will base its evaluation on a preponderance of the evidence collected during its investigation.

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

For each investigation the PHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the PHA, and (3) what corrective measures or penalties will be assessed.

## **Consideration of Remedies**

All errors and instances of program abuse must be corrected prospectively. Whether the PHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

### **PHA Policy**

In the case of family-caused errors or program abuse, the PHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

## **Notice and Appeals**

### **PHA Policy**

The PHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the PHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing (see Chapter 14).

## **PART II: Corrective Measures and Penalties**

### ***15-II.A. Under- or Overpayment***

An under- or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement to a family.

#### **Corrections**

Whether the incorrect rental determination is an overpayment or underpayment, the PHA must promptly correct the tenant rent and any utility reimbursement prospectively.

### **PHA Policy**

Effective dates of changes in tenant rent will be made in accordance with chapter 9A or 9B of this plan.

#### **Reimbursement**

Whether the family is required to reimburse the PHA or the PHA is required to reimburse the family depends upon which party is responsible for the incorrect payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### ***15-II.B. Family-Caused Errors and Program Abuse***

General administrative requirements for participating in the program are discussed throughout the ACOP. This section deals specifically with errors and program abuse by family members.

An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

## **Family Reimbursement to PHA**

### **PHA Policy**

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. The PHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the amount owed, the PHA will terminate the family's lease in accordance with the policies in Chapter 13.

## **PHA Reimbursement to Family**

### **PHA Policy**

The PHA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

## **Prohibited Actions**

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to the PHA [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to the PHA [24 CFR 960.259(a)(4)].
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income [24 CFR 966.4(l)(2)(iii)(C)].

### **PHA Policy**

Any of the following will be considered evidence of family program abuse:

- Offering bribes or illegal gratuities to the PHA Board of Commissioners, employees, contractors, or other PHA representatives
- Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to the PHA on the family's behalf
- Use of a false name or the use of falsified, forged, or altered documents
- Intentional misreporting of family information or circumstances (e.g., misreporting of income or family composition)
- Omitted facts that were obviously known by a family member (e.g., not reporting employment income)
- Admission of program abuse by an adult family member

The PHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

## **Penalties for Program Abuse**

In the case of program abuse caused by a family the PHA may, at its discretion, impose any of the following remedies.

- The PHA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to PHA).
- The PHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 13 (for residents).
- The PHA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.
- The PHA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

### ***15-II.C. PHA-Caused Errors or Program Abuse***

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

#### **De Minimis Errors [24 CFR 5.609(c)(4); Notice PIH 2023-27]**

The PHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in calculating family income. A de minimis error is an error where the PHA determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

PHAs must take corrective action to credit or repay a family if the family was overcharged rent, including when PHAs make de minimis errors in the income determination. Families will not be required to repay the PHA in instances where the PHA miscalculated income resulting in a family being undercharged for rent. PHAs state in their policies how they will repay or credit a family the amount they were overcharged as a result of the PHA's de minimis error in income determination.

##### **PHA Policy**

The PHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error, staff program abuse, or a de minimis error.

#### **Repayment to the PHA**

The family is not required to repay an underpayment of rent caused by PHA error or program abuse.

#### **PHA Reimbursement to Family**

##### **PHA Policy**

The PHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error or staff program abuse.

## **Prohibited Activities**

### **PHA Policy**

Any of the following will be considered evidence of program abuse by PHA staff:

- Failing to comply with any public housing program requirements for personal gain
- Failing to comply with any public housing program requirements as a result of a conflict of interest relationship with any applicant or resident
- Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to the PHA
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of PHA activities, policies, or practices
- Misappropriating or misusing public housing funds
- Destroying, concealing, removing, or inappropriately using any records related to the public housing program
- Committing any other corrupt or criminal act in connection with any federal housing program

## ***15-II.D. Criminal Prosecution***

### **PHA Policy**

When the PHA determines that program abuse by a family or PHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, the PHA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the public housing program will be referred to the appropriate local, state, or federal entity.

## ***15-II.E. Fraud and Program Abuse Recoveries***

PHAs who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin eviction proceedings against a family may retain 100 percent of program funds that the PHA recovers [Notice PIH 2005-7 (HA)].

If the PHA does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through the PHA's grievance process.

# Chapter 16: Program Administration

## **Introduction**

This chapter discusses administrative policies and practices that are relevant to the activities covered in this ACOP. The policies are discussed in seven parts as described below:

Part I: Setting Utility Allowances. This part describes how utility allowances are established and revised. Also discussed are the requirements to establish surcharges for excess consumption of PHA-furnished utilities.

Part II: Establishing Flat Rents and Public Housing Maximum Rents. This part describes the requirements and policies related to establishing and updating flat rent amounts and public housing maximum rents.

Part III: Repayment of Family Debts. This part contains policies for recovery of monies that have been underpaid by families, and describes the circumstances under which the PHA will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part IV: Public Housing Assessment System (PHAS). This part describes the PHAS indicators, how PHAS are scored under PHAS, and how those scores affect a PHA.

Part V: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the PHA will follow.

Part VI: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the PHA's reporting responsibilities related to children with environmental intervention blood lead levels that are living in public housing.

Part VII: Notification to Applicants and Tenants regarding Protections under the Violence against Women Reauthorization Act of 2005 (VAWA). This part includes policies for notifying applicants and tenants of VAWA requirements.

## **PART I: Setting Utility Allowances**

[24 CFR 965 Subpart E]

### ***16-I.A. Overview***

PHAs must establish allowances for PHA-furnished utilities for all check metered utilities and for resident-purchased utilities for all utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

PHAs must also establish surcharges for excess consumption of PHA-furnished utilities [24 CFR 965.506].

The PHA must maintain a record that documents the basis on which utility allowances and scheduled surcharges are established and revised, and the record must be made available for inspection by residents [24 CFR 965.502(b)].

### ***16-I.B Utility Allowances***

The PHA must establish separate allowances for each utility and for each category of dwelling units the PHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of a PHA in establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment [24 CFR 965.505].

Utilities include gas, electricity, fuel for heating, water, sewerage, and solid waste disposal for a dwelling unit. In addition, if the PHA does not furnish a range and refrigerator, the family must be granted a utility allowance for the range and refrigerator they provide [24 CFR 965.505].

Costs for telephone, cable/satellite TV, and internet services are not considered utilities [PH Occ GB, p. 138].

Utility allowance amounts will vary by the rates in effect, size and type of unit, climatic location and sitting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage [PH Occ GB, p. 138].

Chapter 14 of the PH Occupancy Guidebook provides detailed guidance to the PHA about establishing utility allowances.

### **Air-Conditioning**

“If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or check meters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning but cannot be check metered, residents are to be surcharged in accordance with 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.” [24 CFR 965.505(e)].

#### **PHA Policy**

HAWC has air-conditioning installed in limited locations.

### **Utility Allowance Revisions**

[24 CFR 965.507]



The PHA must review at least annually the basis on which utility allowances have been established and must revise the allowances if necessary, in order to adhere to the standards for establishing utility allowances that are contained in 24 CFR 965.505.

The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change, and is required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which the allowance was based.

Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account became effective.

#### **PHA Policy**

Between annual reviews of utility allowances, HAWC will only revise its utility allowances due to a rate change, when required to by the regulation.

### ***16-I.C. Surcharges for PHA-Furnished Utilities***

[24 CFR 965.506]

For dwelling units subject to allowances for PHA-furnished utilities where check meters have been installed, the PHA must establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis or for stated blocks of excess consumption, and must be based on the PHA's average utility rate. The basis for calculating the surcharges must be described in the PHA's schedule of allowances. Changes in the amount of surcharges based directly on changes in the PHA's average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

For dwelling units served by PHA-furnished utilities where check meters have not been installed, the PHA must establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

#### **PHA Policy**

HAWC does not have HAWC-furnished utilities that are billed back to the tenant.

### ***16-I.D. Notice Requirements***

[965.502]

The PHA must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and must:

- Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.
- Describe the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility

consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.

- Notify residents of the place where the PHA's documentation on which allowances and surcharges are based is available for inspection.
- Provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.

### ***16-I.E. Reasonable Accommodation***

[24 CFR 965.508]

On request from a family that includes a disabled or elderly person, the PHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family [PH Occ GB, p. 172].

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

## **PART II: Establishing Flat Rents and Public Housing Maximum Rents**

### ***16-II.A. OVERVIEW***

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Flat rents are also used to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status [24 CFR 5.504].

This part discusses how the PHA establishes and updates flat rents and public housing maximum rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and public housing maximum rents are discussed in Chapter 6.

### ***16-II.B. Flat Rents***

[24 CFR 960.253(b) and Notice PIH 2017-23]

#### **Establishing Flat Rents**

The 2015 Appropriations Act requires that flat rents must be set at no less than 80 percent of the applicable fair market rent (FMR). Alternatively, HAWC may set flat rents at no less than 80 percent of the applicable small area FMR (SAFMR) for metropolitan areas, or 80 percent of the applicable unadjusted rents for nonmetropolitan areas.

For areas where HUD has not determined a SAFMR or an adjusted rent, HAWC must set flat rents at no less than 80 percent of the FMR or apply for an exception flat rent. The 2015 Appropriations Act permits HAWC to request an exception flat rent that is lower than either 80 percent of the FMR or SAFMR/unadjusted rent if HAWC can demonstrate that these FMRs do not reflect the market value of a particular property or unit.

In order to demonstrate the need for an exception flat rent, HAWC is required to submit a market analysis methodology that demonstrates the value of the unit. HAWC must use HUD's rent reasonableness methodology to determine flat rents. In determining flat rents, HAWC 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 HAWC
- Utilities provided by the HAWC
- The PHA must provide a corresponding key explaining the calculations used for determining the valuation for each factor. HUD published a Flat Rent Market Analysis tool on August 22, 2018, which includes a rent adjustment guide, a market rent comparison guide, and a rent adjustment worksheet to aide PHAs in requesting exception flat rents.

HAWC must receive written HUD approval before implementing exception flat rents. PHA's PHAs with a previously approved flat rent exception request may submit a written request to extend the approved flat rents for up to two additional years, provided local market conditions remain unchanged. Detailed information on how to request exception flat rents can be found in Notice PIH 2017-23.

PHAs are now required to apply a utility allowance to flat rents. Flat rents set at 80 percent of the FMR must be reduced by the amount of the unit's utility allowance, if any.

### **Review of Flat Rents**

No later than 90 days after effective date of the new annual FMRs/SAFMRs/unadjusted rent, PHAs must implement new flat rents as necessary based on changes to the FMR/SAFMR/unadjusted rent or request an exception. If the FMR falls from year to year, the PHA may, but is not required to, lower the flat rent to 80 percent of the current FMR/SAFMR/unadjusted rent.

#### **PHA Policy**

HAWC will review flat rents on an annual basis to adjust them as necessary to comply with HUD regulations regarding flat rents.

### **Posting of Flat Rents**

#### **PHA Policy**

HAWC will publicly post the schedule of flat rents in a conspicuous manner in the Property Management Office.

## **Documentation of Flat Rents**

[24 CFR 960.253(b)(5)]

HAWC must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by the PHA in accordance with this method.

## ***16-II.C. Public Housing Maximum Rents***

### **Establishing Public Housing Maximum Rents**

PHAs are prohibited from making financial assistance available to persons who are not citizens or nationals of the United States, and to those who do not have eligible immigration status [24 CFR 5.500]. Therefore, in order to assist mixed families, PHAs must prorate assistance. Public housing maximum rents are needed in order to calculate the tenant rent for a mixed family.

The public housing maximum rent is based on value of the 95th percentile of the total tenant payment (TTP) for each tenant within the PHA. PHAs may calculate a maximum rent on either a PHA- or project wide basis. A separate maximum rent can be provided for each separate project or projects may be combined into logical groups, if appropriate. HUD recommends that a single project basis be avoided for a project unless at least 50 dwelling units are involved.

PHAs may use the “direct comparison” or the “unit distribution” method for establishing the public housing maximum rents for each unit size. Appendix H, of Guidebook 7465.G, Restrictions on Assistance to Noncitizens provides detailed guidance on how to establish public housing maximum rents using the methodologies identified above.

### **Review of Public Housing Maximum Rents**

#### **PHA Policy**

The PHA will recalculate the public housing maximum rents on an annual basis.

### **Posting of Public Housing Maximum Rents**

#### **PHA Policy**

The PHA does not publicly post its Public Housing Maximum Rent schedule, but will make a copy available to the family upon request.

### **Documentation of Public Housing Maximum Rents**

#### **PHA Policy**

The PHA will maintain records that document how the PHA determined the 95th percentile of TTP, whether the maximum rent was determined PHA-wide, project-wide, or with groupings of projects, and the methodology used to determine maximum rents for each unit size.

## **PART III: Family Debts to the PHA**

### **16-III.A. Overview**

This part describes the PHA's policies for recovery of monies owed to the PHA by families.

#### **PHA Policy**

When an action or inaction of a resident family results in the underpayment of rent or other amounts, the PHA holds the family liable to return any underpayments to the PHA.

The PHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When a family refuses to repay monies owed to the PHA, the PHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil law suit
- State income tax set-off program
- Forward the information to the HUD inspector General (OIG) for federal investigation

### **16-III.B. Repayment Policy**

#### ***Family Debts to the PHA***

#### **PHA Policy**

Any amount owed to the PHA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will terminate the family's tenancy in accordance with the policies in Chapter 13. The PHA will also pursue other modes of collection.

#### ***General Repayment Agreement Guidelines***

#### **Down Payment Requirement**

#### **PHA Policy**

Before executing a repayment agreement with a family, the PHA will generally require a down payment of 25 percent of the total amount owed. If the family can provide evidence satisfactory to the PHA that a down payment of 25 percent would impose an undue hardship, the PHA may, in its sole discretion, require a lesser percentage or waive the requirement.

#### **Payment Thresholds**

Notice PIH 2018-18 recommends that the total amount that a family must pay each month—the family's monthly share of rent plus the monthly debt repayment amount—should not exceed 40

percent of the family's monthly adjusted income, which is considered "affordable." Moreover, Notice PIH 2018-18 acknowledges that PHAs have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

#### **PHA Policy**

If a family is paying less than 40 percent of its monthly adjusted income (MAI) in rent, the minimum monthly payment amount will be the greater of the following two amounts:

- The difference between 40 percent of the family's MAI and the total family share at the time the agreement is executed
- \$75

If a family can provide evidence satisfactory to the PHA that a monthly payment amount of \$50 would impose an undue hardship, the PHA may, in its sole discretion, require a lower monthly payment amount.

If the family's income increases or decreases during the term of a repayment agreement, either the PHA or the family may request that the monthly payment amount be adjusted accordingly.

### **Execution of the Agreement**

#### **PHA Policy**

Any repayment agreement between the HAWC and a family must be signed and dated by HAWC and all adult family members.

### **Due Dates**

#### **PHA Policy**

All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.

### **Late or Missed Payments**

#### **PHA Policy**

A payment will be considered "late" if it is received after the 15th of the month but before the 1st of the next month.

A payment will be considered "missed" if no payment is received in a given calendar month. If a family is late more than (2) times in a 12-month period, the repayment agreement will be considered in default and the PHA may require payment in full or may terminate tenancy.

If one payment is missed, the repayment agreement will be considered in default and the PHA may require payment in full or may terminate tenancy.

If a tenant incurs new debts while on a repayment agreement, the PHA may require payment of those debts in full or the PHA may, at its discretion, adjust the current repayment agreement to reflect the new total amount owed and may increase the amount of the monthly payment so that the length of the repayment agreement is not extended.

Any family that has defaulted on a repayment agreement in the last 3 years may be considered ineligible for a repayment agreement and may be required to pay all bills in full.

If a family receives two (2) delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the PHA will terminate tenancy in accordance with the policies in Chapter 13.

### **No Offer of Repayment Agreement**

#### **PHA Policy**

The PHA will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family, or if the amount owed by the family exceeds the lesser of \$10,000 or the federal or state threshold for criminal prosecution.

### ***Repayment Agreements Involving Improper Payments***

Notice PIH 2010-19 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the public housing lease that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of tenancy

## **PART IV: Public Housing Assessment System (PHAS)**

### ***16-IV.A. Overview***

The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

### ***16-IV.B. PHAS Indicators***

[24 CFR 902 Subparts A, B, C, D, and E]

The information below lists each of the current PHAS indicators at the effective date of this plan, the points possible under each indicator, and a brief description of each indicator. A PHA's performance is based on a combination of all four indicators.

These indicators may be modified or replaced by HUD regulation.

### **Indicator 1: Physical condition of the PHA's properties**

Maximum Score: 30

- The objective of this indicator is to determine the level to which a PHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary, and in good repair.
- To determine the physical condition of a PHA's properties, inspections are performed using National Standards for the Physical Inspection of Real Estate (NSPIRE). The inspections are performed by an independent inspector arranged by HUD, and include a statistically valid sample of the units in the PHA's public housing portfolio.

### **Indicator 2: Financial condition of a PHA**

Maximum Score: 30

- The objective of this indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair.
- A PHA's financial condition is determined by measuring the PHA's entity-wide performance in each of the following components: current ratio, number of months expendable fund balance, tenant receivable outstanding, occupancy loss, expense management/utility consumption, and net income or loss divided by the expendable fund balance.

### **Indicator 3: Management operations of a PHA**

Maximum Score: 30

- The objective of this indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.
- A PHA's management operations are assessed based on the following sub-indicators: vacant unit turnaround time, capital fund, work orders, PHA annual inspection of units and systems, security, and economic self-sufficiency.

### **Indicator 4: Resident service and satisfaction**

Maximum Score: 10

- The objective of this indicator is to measure the level of resident satisfaction with living conditions at the PHA.
- The PHA's score for this indicator is based on the results of resident surveys and the level of implementation and follow-up or corrective actions the PHA takes based on the results of the survey.

## ***16-IV.C. PHAS Scoring***

[24 CFR 902.63 and 902.67]



HUD's Real Estate Assessment Center (REAC) issues overall PHAS scores, which are based on the scores of the four PHAS indicators, and the components under each indicator. PHAS scores translate into a designation for each PHA as high performing, standard, or troubled.

A high performer is a PHA that achieves a score of at least 60 percent of the points available under each of the four indicators, and achieves an overall PHAS score of 90 or greater.

A standard performer is a PHA that has an overall PHAS score between 60 and 89, and does not achieve less than 60 percent of the total points available under one of the following Indicators: 1, 2, or 3.

A troubled performer is a PHA that achieves an overall PHAS score of less than 60, or achieves less than 60 percent of the total points available under more than one of the following indicators: 1, 2, or 3.

These designations can affect a PHA in several ways:

- High-performing PHAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
- PHAs that are standard performers may be required to submit an improvement plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)].
- PHAs that are substandard performers will be required to submit and operate under a corrective action plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)(2)].
- PHAs with an overall rating of "troubled" are subject to additional HUD oversight, and are required to enter into a memorandum of agreement (MOA) with HUD to improve PHA performance [24 CFR 902.75].
- PHAs that fail to execute or meet MOA requirements may be referred to the Departmental Enforcement Center [24 CFR 902.77].

PHAs must post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status.

## **PART V: Record Keeping**

### ***16-V.A. Overview***

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### ***16-V.B. Record Retention***

The PHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

PHA Policy

During the term of each public housing tenancy, and for at least four years thereafter, the PHA will keep all documents related to a family's eligibility, tenancy, and termination.

In addition, the PHA will keep the following records for at least four years:

- An application from each ineligible family and notice that the applicant is not eligible
- Lead-based paint records as required by 24 CFR 35, Subpart B
- Documentation supporting the establishment of flat rents and the public housing maximum rent
- Documentation supporting the establishment of utility allowances and surcharges
- Documentation supporting PHAS scores
- Accounts and other records supporting PHA budget and financial statements for the program
- Other records as determined by the PHA or as required by HUD

If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 14-II.A.

## ***16-V.C. Records Management***

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

### **PHA Policy**

All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.

PHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

## **Privacy Act Requirements**

[24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

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

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification (UIV) Data.

## PHA Policy

The PHA has adopted and implemented EIV security procedures required by HUD.

### **Criminal Records**

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

### **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

### **Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking Records**

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking, see section 16-VII.E.

## **PART VI: Reporting Requirements for Children with Environmental Intervention Blood Lead Level**

### ***16-VI.A. Reporting Requirements***

[24 CFR 35.1130(e)]

The PHA has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing.

The PHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional. The PHA must also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

#### **PHA Policy**

The PHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

The PHA will provide written notice of each known case of a child with an environmental intervention blood level to the HUD field office within 5 business days of receiving the information.

## **PART VII: Notification, Documentation, and Confidentiality under the Violence Against Women Reauthorization Act (VAWA)**

### ***16-VII.A. Overview***

The Violence against Women Act (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking who are applying for or receiving assistance under the public housing program. If your state or local laws provide greater protection for such victims, those apply in conjunction with VAWA.

Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located in Chapter 3, "Eligibility" (sections 3-I.C and 3-III.F); Chapter 5, "Occupancy Standards and Unit Offers" (section 5-II.D); Chapter 8, "Leasing and Inspections" (section 8-I.B); Chapter 12, "Transfer Policy" (sections 12-III.C, 12-III.F, and 12-IV.D); and Chapter 13, "Lease Terminations" (sections 13-III.F and 13-IV.D).

### ***16-VII.B. Definitions***

[24 CFR 5.2003, FR Notice 8/6/13]

As used in VAWA:

- 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 person stands in the position or place of a parent; or
  - Any individual, tenant or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:
  - The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
  - A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
  - A person with whom the victim shares a child in common
  - A person who commits acts against an youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction
- The term *economic abuse* means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:
  - Restrict a person's access to money, assets, credit, or financial information
  - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
  - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks the capacity to consent
- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.
- The term *technological abuse* means an act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:
  - Internet enabled devices
  - Online spaces and platforms
  - Computers
  - Mobile devices
  - Cameras and imaging programs
  - Apps

- Location tracking devices
- Communication technologies
- Any other emergency technologies

## ***16-VII.B. VAWA Notification***

[24 CFR 5.2005(a)]

### **Notification to Public**

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its public housing program are aware of their rights under VAWA.

#### **PHA Policy**

The PHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

- A summary of the rights and protections provided by VAWA to public housing applicants and residents who are or have been victims of domestic violence, dating violence, or stalking (see sample notice in Exhibit 16-1)
- The definitions of domestic violence, dating violence, and stalking provided in VAWA (included in Exhibit 16-1)
- An explanation of the documentation that the PHA may require from an individual who claims the protections provided by VAWA (included in Exhibit 16-1)
- A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking
- A statement of the PHA's obligation to keep confidential any information that it receives from a victim unless (a) the PHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibit 16-1)
- The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibit 16-1)
- Contact information for local victim advocacy groups or service providers

## ***16-VII.C. Notification to Applicants and Tenants***

PHAs are required to inform public housing applicants and tenants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

The PHA must distribute a notice of VAWA rights, along with the VAWA self-certification form (HUD-5382) at each of these three junctures.

#### **PHA Policy**

The VAWA information provided to applicants and participants will consist of the notices in Exhibit 16-1 and 16-2.

The PHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. The PHA will also include such information in all notices of denial of assistance (see section 3-III.F).

The PHA will provide all tenants with information about VAWA at the time of admission (see section 8-I.B) and at annual reexamination. The PHA will also include such information in all lease termination notices (see section 13-IV.D).

The PHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA decides to provide VAWA information to a tenant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the PHA make alternative delivery arrangements that will not put the victim at risk.

#### **PHA Policy**

Whenever the PHA has reason to suspect that providing information about VAWA to a public housing tenant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, the PHA may decide not to send mail regarding VAWA protections to the victim's unit if the PHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, the PHA will take reasonable precautions to ensure that no one can overhear the conversation such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

### ***16-VII.D. DOCUMENTATION [24 CFR 5.2007]***

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the PHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, stalking, or human trafficking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The PHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation [FR Notice 11/16/16].



### **PHA Policy**

Any request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

The PHA may, in its discretion, extend the deadline for 10 business days. In determining whether to extend the deadline, the PHA will consider factors that may contribute to the victim's inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim's need to address health or safety issues. Any extension granted by the PHA will be in writing.

Once the victim provides documentation, the PHA will acknowledge receipt of the documentation within 10 business days.

### **Conflicting Documentation [24 CFR 5.2007(e)]**

In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. The PHA must honor any court orders issued to protect the victim or to address the distribution of property. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA must hold separate hearings for the tenants [Notice PIH 2017-08].

### **PHA Policy**

If presented with conflicting certification documents from members of the same household, the PHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made. When requesting third-party documents, the PHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

If the PHA does not receive third-party documentation within the required timeframe (and any extensions) the PHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the PHA will hold separate hearings for the applicants or tenants.

### **Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

### **PHA Policy**

If the PHA accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PHA will document acceptance of the statement or evidence in the individual's file.



### **Failure to Provide Documentation [24 CFR 5.2007(c)]**

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the PHA may allow, the PHA may deny relief for protection under VAWA.

### ***16-VI.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]***

All information provided to the PHA regarding domestic violence, dating violence, sexual assault, stalking, or human trafficking, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, must be retained in confidence. This means that the PHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

#### **PHA Policy**

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

## **EXHIBIT(S)**

### ***EXHIBIT 16-1: Sample Notice to Public Housing Applicants and Residents Regarding the Violence Against Women Act (VAWA)***

This sample notice was adapted from a notice prepared by the National Housing Law Project.

A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your rights under VAWA.

#### **Protections for Victims**

If you are eligible for public housing, the housing authority cannot refuse to admit you to the public housing program solely because you are a victim of domestic violence, dating violence, or stalking.

If you are the victim of domestic violence, dating violence, or stalking, the housing authority cannot evict you based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, or stalking that are caused by a member of your household or a guest can't be the reason for evicting you if you were the victim of the abuse.

#### **Reasons You Can Be Evicted**

The housing authority can still evict you if the housing authority can show there is an actual and imminent (immediate) threat to other tenants or housing authority staff if you are not evicted. Also, the housing authority can evict you for serious or repeated lease violations that are not related to the domestic violence, dating violence, or stalking against you. The housing authority cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

#### **Removing the Abuser from the Household**

The housing authority may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the public housing unit. If the housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, the housing authority must follow federal, state, and local eviction procedures.

#### **Proving that You Are a Victim of Domestic Violence, Dating Violence, or Stalking**

The housing authority can ask you to prove or “certify” that you are a victim of domestic violence, dating violence, or stalking. In cases of termination or eviction, the housing authority must give you at least 14 business days (i.e. Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority is free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority. The form will ask for your name, the name of your abuser, the abuser's relationship to you, the date, time, and location of the incident of violence, and a description of the violence.
- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing “under penalty of perjury.”

- Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the housing authority may evict you.

#### Confidentiality

The housing authority must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority to release the information.
- The housing authority needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority to release the information.

If release of the information would put your safety at risk, you should inform the housing authority.

#### VAWA and Other Laws

VAWA does not limit the housing authority's duty to honor court orders about access to or control of a public housing unit. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, or stalking.

#### For Additional Information

If you have any questions regarding VAWA, please contact \_\_\_\_\_ at \_\_\_\_\_.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

# **Addenda**

## **Addendum A: Medical Marijuana Policy for Public Housing**

On February 10, 2011 the Assistant Secretary for Public and Indian Housing at the U.S. Department of Housing and Urban Development (HUD) published a memo regarding the use of Medical Marijuana in Public Housing and Housing Choice Voucher Programs. The purpose of the Memorandum was to provide guidance on admissions, continued occupancy and termination policies in states that have enacted laws allowing the use of medical marijuana. The State of Oregon is one such state. The Memorandum addresses New Admissions and Current Residents.

### ***New Admissions***

The Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. §13661) requires that Public Housing Authorities (PHA's) administering HUD's rental assistance program establish standards and lease provisions that prohibit admission to Public Housing and Housing Choice Voucher programs based on the illegal use of controlled substances, including state legalized medical marijuana. State laws that legalize medical marijuana directly conflict with the admission requirements set forth in QHWRA and thus are subject to federal preemption.

### ***Current Residents***

For existing residents, QHWRA requires PHAs to establish occupancy standards and lease provisions that will allow the PHA to terminate assistance for use of a controlled substance. However, the law does not compel such action and PHAs have discretion to determine continued occupancy policies that are most appropriate for their communities.

PHAs in states that have enacted laws legalizing the use of medical marijuana must therefore establish a standard and adopt written policy regarding whether or not to allow continued occupancy or assistance for residents who are medical marijuana users. The decision of whether or not to allow continued occupancy or assistance to medical marijuana users in these states is the responsibility of PHAs, not of the Department (HUD).

### ***HAWC Policies***

Based on this guidance the Housing Authority of Washington County has adopted the following policies and procedures:

1. Applicants: Current users of medical marijuana, even when authorized for such use under state law, shall not be eligible for admission into the PHA's public housing and Section 8 Housing Choice Voucher programs. For purposes of this policy, current use shall be defined as the use of marijuana, including medical marijuana, in any form, within 120 days prior to the date of the applicant's signed Personal Declaration form.
  - As a recipient of federal funds, the PHA is required to comply with all federal laws. Marijuana is categorized as a Schedule I substance under the Controlled Substance Act (CSA). See U.S.C. §801 et. seq. The manufacture, distribution or possession of marijuana

is a federal criminal offense, and it may not be legally prescribed by a physician for any reason. See U.S.C. §§ 841(a)(1); 844(a); 812(b)(1)(A)-(C).

- Section 576(b) of the Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. §13661) requires the PHA to deny admission to those households with a member who the PHA determines is, at the time of consideration for admission, illegally using a “controlled substance” as that term is defined in the Controlled Substance Act.
  - The PHA shall not permit the use of medical marijuana as a reasonable accommodation because: 1) persons who are currently using illegal drugs, including medical marijuana, are categorically disqualified from protection under the disability definition provisions of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act; and 2) such accommodations are not reasonable under the Fair Housing Act because they would constitute a fundamental alteration in the nature of the PHA’s operations.
2. Current residents: Under the termination standards of the Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. §13661), the PHA has discretion in (1) public housing to evict or refrain from evicting a current tenant and in (2) the Section 8 program a current program participant who the PHA determines is illegally using a controlled substance.

While the PHA may not grant reasonable accommodations for medical marijuana use, it retains discretion to evict or refrain from evicting current residents who engage in such use as set forth in compliance with PHA policies and the Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. §13661).

3. Current Use: The PHA has determined that limited use of medical marijuana by current tenants and participants is permissible only under the following conditions:
- Except as further limited herein, the current tenant’s/program participant’s use of medical marijuana shall be conducted in strict conformance with the laws of the State of Oregon set forth in ORS 475.300 to ORS 475.346.
  - Current residents Of Public Housing and participants of the Section 8 Housing Choice Voucher Program are prohibited from growing, manufacturing, distributing or selling any illegal or controlled substances while on either program.
  - Current residents of Public Housing and participants of the Section 8 Housing Choice Voucher are prohibited from smoking marijuana, in any form, at all times while on PHA property, on leased or rented premises or in or on voucher-subsidized premises, and must utilize medical marijuana in an alternate delivery format (pills, liquids, food substances, etc.) as authorized under state law.
  - Current residents of Public Housing and participants of the Section 8 Housing Choice Voucher Program are prohibited from growing marijuana, including medical marijuana, at all times while on PHA property, on leased or rented premises or in or on voucher-subsidized premises.
4. Termination: Failure to comply with the PHA’s policies regarding medical marijuana shall result in lease termination (public housing) or termination of assistance (Section 8 Housing Choice Voucher).

## **Addendum B: Limited English Proficiency Plan**

### ***Introduction***

It shall be the policy of the Washington County Department of Housing Services (DHS or Department) to ensure that persons with Limited English Proficiency (LEP) shall not be discriminated against nor denied meaningful access to, and participation in, the programs and services provided by the Department. In order to ensure meaningful access and participation for LEP persons, DHS shall notify such persons that language services are available to them at no cost and shall take reasonable steps to see that language services are provided according to the provisions of the Washington County Department of Housing Services' LEP Plan and Policies as described below.

The LEP Plan and Policies that follow shall apply to all DHS administered programs, services and facilities, regardless of whether or not they receive Federal financial support. However, the LEP Plan and Policies that follow do not apply to the operation or administration of any properties or projects wherein the DHS is not the primary owner (i.e. the DHS is a co-general partner and not the entity with primary control over said property) and the primary owner qualifies as recipient or sub-recipient of federal financial assistance.

It is the intent of the Department, in providing language services to LEP persons, to achieve a balance that ensures meaningful access to programs and services while not incurring undue burdens on DHS resources.

The DHS has designated its Rental Assistance Team Leader as its LEP language services manager. This employee shall provide oversight for the implementation of the LEP Plan and Policies, coordinate and facilitate delivery of LEP language services, ensure that staff receives appropriate training on LEP policies and procedures, and direct the ongoing monitoring and periodic assessment of the LEP Plan and Policy's effectiveness.

### ***Definitions***

**Limited English Proficiency person.** Any person who does not speak English as their primary language and who has a limited ability to read, write, speak, or understand English. Such person or persons shall be entitled to language assistance at no cost to themselves with respect to a particular type of service, benefit, or encounter.

**Vital document.** Any document that contains information that is critical for obtaining or maintaining the services or benefits that are supported by Federal funds, or that are required by law. Such documents may include but are not limited to applications, consent forms, notices of participant rights and responsibilities, disciplinary notices, letters or notices that require a response from the participant or beneficiary, legal notices, and notices advising LEP persons of the availability of free language services. (See Exhibit 2)

**Interpretation.** The act of listening to spoken words in one language (the source) and orally translating it into another language (the target).

**Translation.** The replacement of a written text from one language into an equivalent written text in another language. Note: Some LEP persons cannot read in their own language and back up oral interpretation services may be needed for written documents.

**Four-Factor Assessment.** This is an assessment tool used by the Recipient of federal funding to determine the extent of its obligation to provide LEP services. These four factors are: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided the program to people's lives; and (4) the resources available to the grantee/recipient and costs.

### ***Who is covered?***

HUD's regulation, 24 CFR part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development – Effectuation of Title VI of the Civil Rights Act of 1964", requires all recipients of federal financing assistance from HUD to provide meaningful access to LEP persons. Title VI of the Civil Right Act of 1964 prohibits discrimination on the basis of race, color or national origin. Because language, like culture, is so closely linked to national origin, HUD's final LEP guidance points out that "failure to ensure that LEP persons can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination."

Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the LEP Guidance of the Federal Register (FR-4878-N-01) are to additionally apply to programs and activities of federal agencies, including HUD. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

Federally assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient's programs and activities. To do this, the recipient should: (1) conduct the four-factor assessment; (2) develop a language access plan (LAP); and (3) provide appropriate language assistance.

Recipients of HUD assistance include:

- Public Housing Authorities
- Sub-recipients also if receiving State Community Development Block Grant (CDBG) and or HOME grants.

Coverage under Title VI, Executive Order 13166 and HUD's regulations extends to a recipient's entire program or activity, (i.e., to all parts of a recipient's operations). This is true – even if only one part of the recipient receives the federal assistance. For DHS, this requirement would include its managed affordable housing units.

### ***Identification of LEP persons who need language services assistance***

The Department shall use the following methodology and data sources to identify and determine the number of LEP persons currently using the DHS' services, the number of LEP persons in the DHS' area of operations who may be eligible for programs and services and the particular languages used by both groups.

The Department will use various methods to identify LEP persons with whom they have contact. These will include:

- Current and past experiences with LEP persons encountered by staff. The number and type of such encounters will be periodically tabulated and analyzed to determine the breadth and scope of the language services required. In this analysis, consideration will be given to minority language populations that are eligible but may have been underserved because of existing language barriers. To facilitate these encounters, notices will be posted in the lobby of the main office and in the separate lobbies of our affordable housing sites where site managers are normally present. These posted notices will be in commonly encountered languages and should encourage LEP persons needing language assistance to self-identify.
- Alternate sources of LEP data. In addition to the latest Census data, the Department shall also analyze data from the Modern Language Association ([www.mla.org](http://www.mla.org)) regarding languages spoken in Washington County as well as the ability to speak English “well” or “very well” as self-identified by speakers of various languages within the County. As part of its assessment, the Department will also review the Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance available at [www.lep.gov/selfassesstool.htm](http://www.lep.gov/selfassesstool.htm). Data may also be assessed, when available, from State and local governments, State Welfare Departments, school districts, community organizations including faith-based organizations, and legal aid entities.
- “I Speak \_\_\_\_” or “Language Identification” cards in the variety of languages found in the Department’s area of operations. The cards will also be used by staff on a day-to-day basis to determine and document the need for particular language services during routine activities and encounters.
- Staff encounters at initial screening of applicants and at each annual review. Applicants and participants in DHS’ various programs will be provided with a Language/Alternate Format Designation form (see sample – Exhibit 1). The form will ask if the family requires alternate formats of communication (i.e. large print, audio tape, electronic format, etc.) and will also ask applicants and participants to self-identify their need for interpretive services. This data will be captured in the housing software and accessible as a report. The Rental Assistance Team Leader will oversee this process and will generate a record of all requests for alternate format(s) and/or languages other than English. This information shall be reviewed at least annually to ensure that the LEP plan addresses the language needs of persons in Washington County.
- Self-identification through the application form. The Department will document within the application form that the applicant has been informed of their right to language services at no cost, identify their primary language, and whether or not they would like an interpreter or prefer to receive documents translated into their primary language.

### ***Frequency of contact with LEP persons:***

In conjunction with research to identify LEP persons in the DHS’ area of operations, the Department shall also compile information regarding the frequency of contact with LEP persons. The more frequent the contact and or the number of associated requests for alternate format(s) or languages other than English, as self-identified by applicants and participants in its programs, the more likely that language services for a specific language group will be needed. Measures necessary for a program that serves a LEP person one time or occasionally will necessarily be different from those that serve LEP persons every day. While less frequent contact suggests a different, less intense solution, some services may still be necessary for times when a LEP person occasionally seeks services.



The Department shall also provide language services in the conduct of its outreach efforts which are intended to make the general public aware of its programs and services. In this manner LEP persons who are a part of the population in the Department's area of operations will have an equal opportunity to learn about the DHS' programs and services and to access and participate in them. The Department shall continue to ensure that at a minimum, at least one bilingual-Spanish staff person is present at public events, and shall also continue to provide interpretation in other languages when arranged for in advance. Typically, whenever the Department intends to hold a public event of any type, a phone number is provided for persons who will require interpretive services in order to participate in the event.

### ***Nature and importance of the program or service***

The Department recognizes that within the range of programs and services it provides, some programs and services are more important than others. While it is the Department's intent to provide meaningful access to all participants and eligible persons, the availability of resources may limit the provision of language services in some instances.

Activities such as outreach, intake, leases, rules of occupancy, legal actions, life and safety notices, and the like have a high priority. Information about and an understanding of these activities should be effectively communicated to all persons affected by them.

Other activities such as recreation programs, social activities, optional meetings, and related areas are of a lesser importance and hence a lower priority.

The Department will develop a listing of all activities related to its programs and services, and a matrix showing the relative importance of each. Based on this analysis, the Department shall determine how language services to LEP persons shall be delivered to each activity.

The Department shall continue its practice of offering oral interpretation at no charge at meetings, events, and other activities, provided that the need is identified by the participant(s) at least forty eight (48) hours prior to the event. Written communication advertising such events shall provide instructions for requesting interpretation services.

### ***Types of language services to be provided***

The data collected under research into the various language groups in the Department's area of operations shall be specific enough to inform staff as to the variety of language groups for whom interpretation and translation services are needed.

The Department shall provide language services to LEP persons by a variety of methods based upon the relative numbers of such persons and the frequency of contacts or anticipated contacts. Reasonable steps shall be taken to accomplish this but at a point at which costs approach or exceed the benefits, alternative methods of delivery of language services will be evaluated and appropriate changes made.

Based upon the number or proportion of LEP persons of various language groups served or encountered in the eligible population as of May 2007, the DHS shall provide language services as indicated below:

Provision of Written Language Assistance	Language Group(s)	Determination:
Translate Vital Documents	<ul style="list-style-type: none"> <li>• Spanish</li> <li>• Korean</li> <li>• Vietnamese</li> </ul>	Based upon Modern Language Association (MLA) data, there are more than 1,000 speakers of these languages who self-identify that they speak English “not well” or “not at all” within the Department’s jurisdiction.
Translated Written Notice of Right to Receive Free Oral Interpretation of Documents	<ul style="list-style-type: none"> <li>• Spanish</li> <li>• Korean</li> <li>• Russian</li> <li>• Ukrainian</li> <li>• Somalian</li> </ul>	Based upon the Department’s past experience with LEP persons encountered by DHS staff, these are the most common languages for which interpretation is requested.
No Written Translation Required	<ul style="list-style-type: none"> <li>• All Others</li> </ul>	While no written translation is required for other languages under the LEP Plan, the Department shall continue its practice of providing oral interpretation when requested by applicants/participants of its programs.

## ***Policy and Procedures***

**General.** The Department will post a notice or poster in a conspicuous place in the DHS main office, affordable housing managers’ offices and common areas (e.g., community rooms or laundry rooms) that advises tenants, applicants or members of the general public that interpreter services are available at no charge to the individual who is seeking services or information regarding such services.

The Department will also display HUD’s Language Identification (“I SPEAK”) cards” in the DHS main office, affordable housing managers’ offices, and entry points and/or areas where tenants, applicants or members of the general public are likely to come into contact with the receptionist or management staff.

The Department will contract with a telephone interpretive service (currently AT&T Language Line) that will allow tenants, applicants or members of the general public who do not speak English to communicate with the DHS’ staff or private management staff at the time they call or come into the DHS main office, affordable housing managers’ office or reception area.

### Telephone System Protocols.

The Department will use a telephone voice mail menu that provides a Spanish-language version of the English language menu. This menu will be reviewed at least annually to ensure that terminology is current and accurate.

### Documentation Guidelines.

- ***Interpretative Services.*** Use the following guidelines for documenting interpretive services provided to tenants and applicants.
  - Document the name of the interpreter, the interview language and the date and time of the interpretation.

- Document the “style” of the interpretation:
  - Phrased interpretation where the provider (e.g., DHS) interviews in short phrases that are translated as accurately as possible by the interpreter
  - Simultaneous interpretation
  - Summary interpretation where the provider makes long statement and the interpreter summarizes them.
  
- **Translation Services.** Use the following guidelines for documenting translation services provided to tenants and applicants.
  - Document the name of the interpreter, the interview language, and the date and time of the translation
  - Identify the document translated and whether translation is a summary or a complete and accurate translation.

#### Marketing and Outreach.

In all outreach/marketing materials to include website and general advertising, identify in both English and Spanish that interpretive services are available and the process by which these interpretive services can be accessed by prospective applicants and members of the general public. To the maximum extent possible but consistent with the type of information or services being communicated, the Department will notify prospective applicants and members of the General Public that there are other interpretive services available and how they may access them. These other languages include: Korean, Vietnamese, Russian, Ukrainian, and Somalian.

#### Reasonable Accommodation Policy.

The DHS will provide information in the briefing packet that this policy and any related documents necessary for an applicant or tenant to request an accommodation or modification of the premises is available in English and Spanish. A notice will advise that interpretive services are available for the other languages.

### ***Procurement of interpretation and translation services for LEP Persons***

The following methods of providing interpretation and translation services shall be considered and used based upon the assessment of need for the DHS:

1. Contracting with qualified interpreters and translators, either individually or through an organization which provides such persons. (Essential when accuracy and details are important or critical.)
2. Hiring qualified interpreters and translators. (Essential when accuracy and details are important or critical.)
3. Hiring bilingual staff who subsequently receive training in proper interpretation and translation protocol. (Useful when interpretation needs are regular and ongoing, and when the importance of the encounter may be less than that required in legal action.)
4. Using telephone (or video conferencing) interpreter services. (Useful when prompt delivery of interpretation services is required.)

5. Using community volunteers (either individuals or community service agencies that provide services to one or more language groups. (Useful when language service needs are less important or informal.)
6. Using family members or friends. (Although there are some situations where this is not suitable, in others it may be useful when language service needs are least important or informal.)

The Department shall explore the most cost effective means of delivering competent language services before limiting services due to resource limitations or concerns. In the process of deciding which services shall be provided, DHS shall thoroughly document the process used in arriving at the determination of which services are to be provided to which groups. This documentation shall be maintained in DHS records to demonstrate compliance with the LEP Guidance issued by HUD (December 19, 2003).

### ***Quality and competency of language services***

The Department shall make every reasonable effort to ensure that the language services it provides to LEP persons are of the highest quality and that the competency of interpreters and translators is appropriate to the situation.

Interpreters. Oral interpretation of encounters, interviews, meetings and the like require a certain level of competency and professionalism on the part of the interpreter. These characteristics do not necessarily exist in a person who is simply bilingual. Likewise, formal certification while helpful may not always be required. Often the importance of the encounter or the consequences will direct the level of professionalism needed. For example, a grievance hearing or court hearing regarding a lease termination may require a certified interpreter, while a meeting at a resident's home about a minor neighborhood complaint may not.

- Translation and interpretation, whenever possible, shall be provided by DHS staff members who have passed Washington County's standardized test for bilingual ability – subject to the criteria below.
- If a staff member who speaks the necessary language is not available, the DHS shall obtain translation and interpretation services only from a certified translation/interpretation service.

When using an interpreter, DHS shall use the following general criteria to ensure effective communications with LEP persons:

- Demonstrated proficiency in and ability to communicate information accurately in both English and in the other language and able to identify and employ the appropriate mode of interpreting (consecutive, simultaneous, summarization, or sight translation).
- Knowledge in both languages of any specialized terms or concepts particular to DHS programs or services and of any particularized vocabulary and phraseology used by the LEP person, or the ability to explain either in English or the necessary language, the specialized term(s), concept(s), particularized vocabulary or phraseology.
- An understanding of and ability to follow confidentiality and impartiality rules to the same extent that the DHS employee for whom they are interpreting or to the extent that their position requires or both.

- Understanding of and adherence to their role as interpreter without deviating into a role as counselor, legal advisor, or other role.
- Awareness of regionalisms (dialects) used by the LEP persons for whom they are interpreting.

When interpretation is needed and reasonable, it shall be provided in a timely manner and appropriate place so as to avoid the effective denial of a benefit or service. The importance of the benefit or service to meaningful access to programs and services will dictate the urgency of providing the language service. Where access to or exercise of a service is not precluded by a reasonable delay, the language service may be reasonably delayed.

Translators. When selecting translators, the list of criteria applied to determine competency and professionalism for interpreters above shall also be applied to the extent that those criteria are appropriate. Translation skills can be very different from those of interpretation. When vital documents are involved, the Department may decide to use professional translators or translation associations. Translated documents may be checked by a second translator or translated back into English by a second party to confirm accuracy.

### ***Documents Used by the DHS***

The Department shall conduct an initial review of its written documents that are generally available to and used by the general public, applicants and residents for the purpose of assessing the importance of those documents to its clientele including LEP persons.

This analysis shall be based upon HUD’s “Four Factor Assessment” that is found in the Notice regarding guidance on LEP persons. As indicated earlier under Definitions, the four factors are 1) the number or proportion of LEP persons encountered or eligible to be served; 2) the frequency of contact; 3) the nature or importance of the program or activity; and 4) the resources available to the DHS and the costs.

Based upon this analysis, a determination shall be made as which documents shall be translated and into which languages. This may range from word for word translation of legal notices to the simple inclusion on other less important documents of a notice in various languages that translations or interpretations may be available upon reasonable request.

The Department will incorporate the following ‘safe harbors’ established by HUD for written translations:

Size of Language Group	Recommended Provision of Written Language Assistance
1000 or more in the eligible population in the market area <i>OR</i> among current beneficiaries* (See Note 3)	Translated vital documents
More than 5% of the eligible population or beneficiaries <i>AND</i> more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries <i>AND</i> 50 or less in number	Translated written notice of right to receive free oral interpretation of documents

5% or less of the eligible population or beneficiaries <i>AND</i> less than 1000 in number ** (See Note 4)	No written translation is required
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**Note 1:** “A ‘safe harbor’ means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient’s written translation obligations.” [HUD Final LEP Guidance, part VI.B.3]

**Note 2:** There are **NO** ‘safe harbors’ for interpretation. The ‘safe harbor’ provisions for written translation “do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and reasonable. [HUD LEP Final Guidance, part VI.B.3]

**Note 3:** The Department has used the Modern Language Association (MLA) data to further identify those language groups in the County that are “eligible” based on self-identification that they speak English “not well” or “not at all”.

**Note 4:** The Department does not have any languages, other than Spanish, that currently exceed the 5% or 1000 “eligible persons” standard using MLA data. However, based upon the Department’s past experience with LEP persons encountered by DHS staff, Russian, Ukrainian and Somalian are the most common languages for which interpretation is requested.

The assessment shall result in a determination of which documents shall be classified as “vital,” and “non-vital.” This analysis of documents shall be applied on an ongoing basis as new documents are created and old ones revised. The analysis shall be reviewed on a periodic basis (not less than annually) to consider the overall impact to LEP persons.

As evidenced in the table above, the Department shall provide written translation of vital documents for LEP language groups that are either (1) 1000 or more or (2) more than 5%, of the eligible population in the market area or among current beneficiaries and more than 50 in number.

Translation of vital documents into other languages that do not meet this criterion may be provided orally if and when needed. If there are fewer than 50 persons in a language group that meets the 5% level, the DHS will not translate documents but will instead provide a written notice in the appropriate language of the LEP group of the right to receive competent oral interpretation of the written materials free of cost.

The DHS shall develop and maintain a register of approved interpreters and translators for language services required for LEP persons.

### ***Type and frequency of notice to LEP persons***

The Department shall provide appropriate notice to LEP persons and language groups of the availability of free language services that ensure meaningful access to programs and services provided by the DHS. Based upon the results of research into the language groups that are encountered in the DHS’ area of operations, notices in those appropriate languages informing LEP persons and groups shall be posted in common areas, offices, and anywhere that applications are taken. These notices shall explain how to receive language services.

In addition, as applicable:

- Notices shall be included on or with outreach documents and tagged onto the front of commonly used materials.

- Notices shall be distributed to grass roots and faith-based community organizations informing LEP persons of the Department's programs and services and of the availability of free language services if needed.
- Telephone answering messages and voice mail menus shall include brief notices in the most commonly used languages.
- Other notices shall be posted as determined appropriate in local newspapers in commonly used languages and in non-English periodical publications in the area of operations, on non-English radio or television programs, and in schools, State and local governmental offices, and other locations where LEP persons may see them.

### ***Training for staff persons***

The Department shall provide training to its staff regarding its LEP Plan and Policies. A determination of the frequency of staff encounters with LEP persons shall dictate the level of detail of this training. All employees who are likely to have contact with LEP persons shall be trained to assure that they know LEP policies and procedures, that they work effectively with in-person and telephone interpreters, and they understand the dynamics of interpretation among LEP providers and interpreters. Staff having the greatest contact shall be trained first to effectively implement the LEP Plan and Policies through the use of standardized procedures. Those staff having the least amount of contact with LEP persons shall, at a minimum, be trained to be fully aware of the Plan and Policies so that they may reinforce its importance and ensure implementation by other staff.

LEP training shall be part of the orientation for all new employees who work with LEP persons. The Department will document training and orientations on the LEP Plan and Policies for new employees with the level of detail appropriate to their assigned job responsibilities. On-going employees will receive a one-time orientation on the LEP Plan which will be documented. (See Exhibit 3)

### ***Monitoring compliance, assessing performance, and revisions***

The Department shall monitor implementation of the LEP Plan and Policies on an ongoing basis, making revisions to policies and procedures as may be required periodically. The Department shall also review (not less than annually) the overall effectiveness of its LEP Plan and Policy. This review shall consider information from the following sources and criteria as well as other factors as may be appropriate:

Changes in demographics including new language groups and changes in the proportion of existing language groups, types of services, and other needs.

Frequency of encounters with LEP persons.

Whether existing language services are meeting needs of LEP persons.

Availability of new resources including technology.

Whether identified sources for assistance are still available and viable.

How well staff understand and have implemented the LEP Plan and Policies

Feedback from the community at large and from minority language groups and persons.

Based upon findings of the periodic review, the DHS shall revise the LEP Plan and Policies to ensure its effectiveness in meeting the access and participation needs of LEP groups and persons. Staff shall document revisions to the LEP Plan and Policies as they are necessary and the reasons therefore.

### ***Discrimination-Complaint Procedures***

For regularly encountered LEP language groups, LEP persons should be provided notice of their opportunity to file a discrimination complaint in accordance with federal regulations. For infrequently encountered LEP language groups, LEP persons should be advised orally of the opportunity to file a discrimination complaint pursuant to the regulations.

Proposed



## Exhibit No. 1 - (Sample Format) - Language/Alternate Format Designation Form

Department of Housing Services Language/Alternate Format Designation

The Washington County Department of Housing Services (DHS) wants to provide effective communication and services to all its clients. This includes persons with disabilities, and persons who do not speak English.

The purpose of this form is to gather information to help us serve you better.

### Kinds of Communication

DHS can communicate with persons who have disabilities in several ways. Check below to tell us how you would like to get information from the DHS:

- I do not need written materials in a different format.
  - I need written materials in the following format:
    - Large Print: This is 18 point font.
    - Audiotape: Text is recorded on an audiocassette tape.
    - Braille: Written text is provided in Braille.
    - Electronic format: Written material is saved as "plain text" on a CD-ROM or 3.5" floppy disk.
    - Spoken: Written material is read aloud by a DHS employee, in person or over the phone.
  - I need a sign language interpreter.
  - Other (please explain): \_\_\_\_\_
- 

### Your Language

- I speak English and read English and do not need help communicating with the DHS.
- I speak English, but I need help filling out paperwork.
- I do not speak or read English, and I need written materials in:

<input type="radio"/> Bosnian	<input type="radio"/> Cambodian	<input type="radio"/> Chinese
<input type="radio"/> Korean	<input type="radio"/> Laotian	<input type="radio"/> Romanian
<input type="radio"/> Russian	<input type="radio"/> Spanish	<input type="radio"/> Vietnamese
<input type="radio"/> Other: _____		
  
- I do not speak or read English, and I need oral communication in:

<input type="radio"/> Bosnian	<input type="radio"/> Cambodian	<input type="radio"/> Chinese
<input type="radio"/> Korean	<input type="radio"/> Laotian	<input type="radio"/> Romanian
<input type="radio"/> Russian	<input type="radio"/> Spanish	<input type="radio"/> Vietnamese
<input type="radio"/> Other: _____		

I have read this form, or it has been read to me.

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## Exhibit No. 2 – HUD’s List of “Vital” Documents

At an LEP meeting that HUD held on February 28, 2007, a HUD representative announced that HUD has identified eight (8) PIH forms as “vital” documents and is in the process of translating the forms into 11 languages. Currently, HUD has translated vital documents only into Spanish. It is estimated that some, but probably not all forms will be translated into some of the 11 languages in the next 12-24 months. These forms and languages are indicated in the table below:

FORMS	LANGUAGES
Authorization for Release of Information/Privacy Act Notice (HUD-9886)	Spanish
Request for Tenancy Approval (HUD-52517)	French
HAP Contract (HUD-52641)	Vietnamese
Tenancy Addendum (HUD-52641-A)	Haitian Creole
Family Self-Sufficiency (FSS) Program Contract of Participation (HUD-52650)	Hmong
FSS Escrow Account Credit Worksheet (HUD-52652)	Chinese
Statement of Homeownership Obligations (HUD-52649)	Cambodian
“A Good Place to Live”	Korean
	Arabic
	Russian
	Laotian

Although HUD has indicated that it will be adding to this list “as necessary”, the exact timetable for these HUD forms is not known at this time. In the interim, the Department will ensure that it provides the necessary interpretation for the HUD documents as well as translated local documents and notices to allow LEP persons to effectively participate in, or benefit from, its programs. The Department will review its own forms and documents and determine whether they are “vital” or “non-vital”. Vital documents may include intake and reexamination forms, the lease and tenant rules for the public housing program, critical or emergency notices to tenants, the notices of denial, termination, etc. Other documents that may be considered as “vital” and therefore need to be translated are the Grievance Procedures and Reasonable Accommodation Procedures associated with the various programs. The Department estimates that it should be able to translate its “vital” documents into Korean and Vietnamese within 12-18 months. Translations of “vital” documents into other community languages are not required at this time, but this requirement will be reviewed annually.

The failure to provide written translations, however, under the circumstances outlines above will not necessarily mean noncompliance with Title VI and Section 188. If the written translation of a certain document or set of documents would be so financially burdensome as to defeat the legitimate objectives of the provider’s program or activity, and there is an alternative means to provide the LEP persons with meaningful access to the information, such as timely, oral interpretation of vital documents, this may suffice when reviewing the program or activity in its totality.

The Department will give careful consideration to the safe-harbor guidance when deciding which documents to provide in written form in languages other than English.

### **Exhibit No. 3 – LEP Staff Training**

The Department's effective commitment to LEP Plan and Policies requires a trained and knowledgeable staff. As a result, DHS Staff should know their obligations to provide meaningful access to information and services for LEP persons. To be effective, the DHS LEP Plan includes the following training parameters:

- Staff should know about LEP policies and procedures, and how to implement them.
- Staff should be aware of proper noticing requirements for LEP persons, to include posting of signs in common areas, stating in outreach documents that language services are available from the Department, and using the telephone voice mail menu, etc.
- Staff should be aware of the types of language services available (i.e., interpretation and translation)
- Staff should be trained on how they can obtain these services for their LEP clients
- Staff should be trained on how to respond to LEP callers
- Staff should be trained on how to use HUD's Language-Identification ("I Speak") Cards"
- Staff should be trained on how to respond to written communication from LEP persons
- Staff having contact with the public need to be trained to work effectively with in-person and telephone interpreters
- Staff should be trained on how to respond to LEP persons who have in-person contact with recipient staff, and
- Staff should be trained to know how to ensure competency of interpreters and translation services.

The Department will provide a one-time orientation of these policies and procedures to all its employees in public contact positions. Training will be provided to new employees as part of their orientation. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of the LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

The Rental Assistance Team Leader will be responsible for monitoring and managing the LEP program. In addition to periodic review of LEP language-assistance practices and procedures, updating staff on more effective ways to serve LEP clients and the laws, rules and regulations pertaining to LEP clients, he/she will maintain a "training registry" that records the names, dates and type of LEP program-related employee training.

To assure the success of the language assistance program, the Rental Assistance Team Leader should monitor the LEP program periodically, but not less than annually, to assess the effectiveness and efficiency of its program. This monitoring may include, but need not be limited to:

1. Systematic feedback from LEP clients
2. Systematic feedback from staff;
3. Periodic in-house reviews of the current communications needs of LEP clients; and,
4. Periodic contact with community-based organizations that provide services to LEP clients.

# **Admissions and Continued Occupancy Plan Revisions and Updates**

Revised effective 4/6/2021 with Board Approval

Revised effective 5/3/2022 with Board Approval

Revised effective 7/1/2023 with Board Approval

Revised effective 7/1/2024 with Board Approval

Proposed