



# **Admissions and Continued Occupancy Policy**

May, 2006

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## **Introduction**

### **THE OAKLAND HOUSING AUTHORITY**

#### **ADMISSIONS AND CONTINUED OCCUPANCY POLICY (ACOP)**

##### **ABOUT THE ACOP**

Oakland Housing Authority (OHA) policy must be consistent with the public housing lease and any policy documents provided to tenants, and the lease and policy documents must comply with federal, State, and local law.

The ACOP contains policies that reflect the terms of OHA's public housing lease. Policies on a particular topic may be included in the public housing lease, or may be a separate document incorporated in the lease by reference, such as a pet policy or transfer policy.

##### **REFERENCES CITED IN THE ACOP**

Authority for OHA policies is derived from many sources. Primary among these sources are regulations and guidance issued by U. S. Department of Housing and Urban Development (HUD). California law also directs OHA policy. State and local law must be followed where such law exists and does not conflict with federal regulations. In the absence of legal requirements or HUD guidance, property management industry practice guides OHA policy. Finally, the public housing lease will affect OHA policy and therefore must be consistent with federal and state laws and regulations.

##### **HUD**

HUD provides the primary source of OHA 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 housing authorities through HUD-published guidebooks. Expired HUD Notices and handbooks also provide guidance for OHA policy. Following HUD guidance is optional, as long as OHA 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, OHA reliance on HUD guidance provides OHA with a "safe harbor."

Content contained on the HUD website provides further clarification of HUD policies. For example, FAQs (Frequently Asked Questions) on the HUD website provides direction on the application of federal regulations to a specific pattern.

## State Law

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

## Industry Practice

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

## RESOURCES CITED IN THE MODEL ACOP

The model 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 model 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 model ACOP or that may be helpful to you.

### Abbreviations

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

<b>Abbreviation</b>	<b>Document</b>
CFR	Code of Federal Regulations
HCV GB	Housing Choice Voucher Program Guidebook (7420.10G), April 2001.
HUD-50058 IB	HUD-50058 Instruction Booklet
PH OCC GB	Public Housing Occupancy Guidebook, June 2003.
RHIIP FAQs	Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions.
VG	PIH Notice 2004-01 Verification Guidance, March 9, 2004.

## Resources and Where to Find Them

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

<b>Document and Location</b>
Code of Federal Regulations <a href="http://www.access.gpo.gov/nara/cfr/index.html">www.access.gpo.gov/nara/cfr/index.html</a>
Earned Income Disregard FAQ <a href="http://www.hud.gov/offices/pih/phr/about/ao_faq_eid.cfm">www.hud.gov/offices/pih/phr/about/ao_faq_eid.cfm</a>
Enterprise Income Verification (EIV) System PHA Security Procedures, Version 1.2, issued January 2005 <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/eivsecguidepha.pdf">http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/eivsecguidepha.pdf</a>
Executive Order 11063 <a href="http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm">http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm</a>
Federal Register <a href="http://www.access.gpo.gov/su_docs/aces/fr-cont.html">http://www.access.gpo.gov/su_docs/aces/fr-cont.html</a>
General Income and Rent Determination FAQ <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm">www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm</a>
Housing Choice Voucher Program Guidebook (7420.10G), April 2001. <a href="http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm">www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm</a>
HUD Guidelines for Projecting Annual Income When Upfront Income Verification (UIV) Data is Available <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/guideprojincome.doc">http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/guideprojincome.doc</a>
HUD-50058 Instruction Booklet <a href="http://www.hud.gov/offices/pih/systems/pic/50058/pubs/ib/form50058ib.pdf">http://www.hud.gov/offices/pih/systems/pic/50058/pubs/ib/form50058ib.pdf</a>
Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004 <a href="http://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf">http://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf</a>
Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 <a href="http://www.hudclips.org/sub_nonhud/cgi/pdf/31267.pdf">http://www.hudclips.org/sub_nonhud/cgi/pdf/31267.pdf</a>

OMB Circular A-133 <a href="http://www.whitehouse.gov/omb/circulars/a133/a133.html">http://www.whitehouse.gov/omb/circulars/a133/a133.html</a>
PIH Notice 2002-01 (HA), Accessibility Notice <a href="http://www.hud.gov/offices/pih/publications/notices/02/pih2002-1.pdf">http://www.hud.gov/offices/pih/publications/notices/02/pih2002-1.pdf</a>
PIH Notice 2004-01 Verification Guidance, March 9, 2004. <a href="http://www.hud.gov/offices/pih/publications/notices/04/pih2004-1.pdf">www.hud.gov/offices/pih/publications/notices/04/pih2004-1.pdf</a>
PIH Notice 2005-7 (HA), Rental Integrity Monitoring (RIM) Disallowed Costs and Sanctions Under the Rental Housing Integrity Improvement Project (RHIIP) Initiative <a href="http://www.hud.gov/offices/pih/publications/notices/05/pih2005-7.pdf">http://www.hud.gov/offices/pih/publications/notices/05/pih2005-7.pdf</a>
Public Housing Occupancy Guidebook, June 2003. <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm">www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm</a>
Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions. <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/faq.cfm">www.hud.gov/offices/pih/programs/ph/rhiip/faq.cfm</a>
Verification FAQ <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/faq_verif.cfm">www.hud.gov/offices/pih/programs/ph/rhiip/faq_verif.cfm</a>

The HUD website is <http://www.hud.gov/index.html>.

Guidebooks, handbooks and other HUD published and federal resources may be found at the HUDClips website: [www.hudclips.org](http://www.hudclips.org).

## Chapter 1

### OVERVIEW OF THE PROGRAM AND PLAN

#### INTRODUCTION

OHA receives its operating subsidy for the public housing program from the Department of Housing and Urban Development. OHA is not a federal department or agency. A public housing agency (PHA) is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. OHA enters into an Annual Contributions Contract with HUD to administer the public housing program. OHA 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 OHA 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: The Public Housing Agency (OHA). This part includes a description of OHA, 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: OHA

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

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

## **1-I.B. ORGANIZATION AND STRUCTURE OF OHA**

Public housing is funded by the federal government and administered by the **Oakland Housing Authority** for the jurisdiction of the **City of Oakland, California**.

PHAs are governed by a board of officials that are generally called “commissioners.” Although some PHAs may use a different title for their officials, 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 OHA 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 OHA are taken through written resolutions, adopted by the board and entered into the official records of OHA.

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

### **MTW Demonstration Program**

OHA policy may also be affected by the Authority’s participation in Moving to Work (MTW), a HUD demonstration program that allows public housing authorities to design and test new policies and procedures at the local level. An MTW Agreement was executed on March 31, 2004, which defined the areas and parameters of OHA’s flexibility under MTW, allowing the Authority to begin to explore innovative methods of delivering housing and supportive services to low-income residents. Changes to the ACOP developed in the MTW program must be approved by the OHA Board of Commissioners and submitted to HUD.

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

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides the basis for strategy development, identification of critical success factors, resource allocation decisions, as well as ensuring client and stakeholder satisfaction.

### OHA Policy

OHA's mission is to assure the availability of quality housing for low-income persons and to promote the civic involvement and economic self-sufficiency of residents and to further the expansion of affordable housing within Oakland.

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

As a public service agency, OHA is committed to providing excellent service to all public housing applicants, residents, and the public. In order to provide superior service, OHA 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 OHA'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 OHA's support systems and commitment to our employees and their development.

OHA 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.

Oakland Housing Authority has the additional advantage of participating in HUD’s demonstration program Moving to Work (MTW). MTW was authorized under the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134, 110 Stat 1321) to offer PHAs the opportunity to develop and test innovative, locally-designed housing and self-sufficiency strategies for low-income families. It does so by allowing exemptions from existing public housing and tenant-based Housing Choice Voucher rules and permitting PHAs to combine operating, capital, and tenant-based assistance funds into a single agency-wide funding source. The purposes of the MTW program are to give PHAs and HUD the flexibility to find new ways to: reduce cost and achieve greater costs effectiveness for the Authority; promote self-sufficiency among tenants and clients; and increase housing choices for low-income families.

## **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 OHA to administer programs in accordance with HUD regulations and provides an operating subsidy to OHA. OHA must create written policies that are consistent with HUD regulations. Among these policies is OHA's Admissions and Continued Occupancy Policy (ACOP). The ACOP must be approved by the board of commissioners of OHA.

The job of OHA pursuant to HUD regulations is to provide decent, safe, and sanitary housing, in good repair, to low-income families at an affordable rent. OHA screens applicants for public housing and, if they are found eligible and accepted, OHA offers the applicant a unit. If the applicant accepts the offer, OHA 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 OHA 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 OHA is in partnership with mixed-financed developments and manages public housing development, OHA roll is that of owner and landlord.. OHA and its partners must comply with all of the legal and management responsibilities of a landlord in addition to administering the program in accordance with HUD regulations and PHA policy.

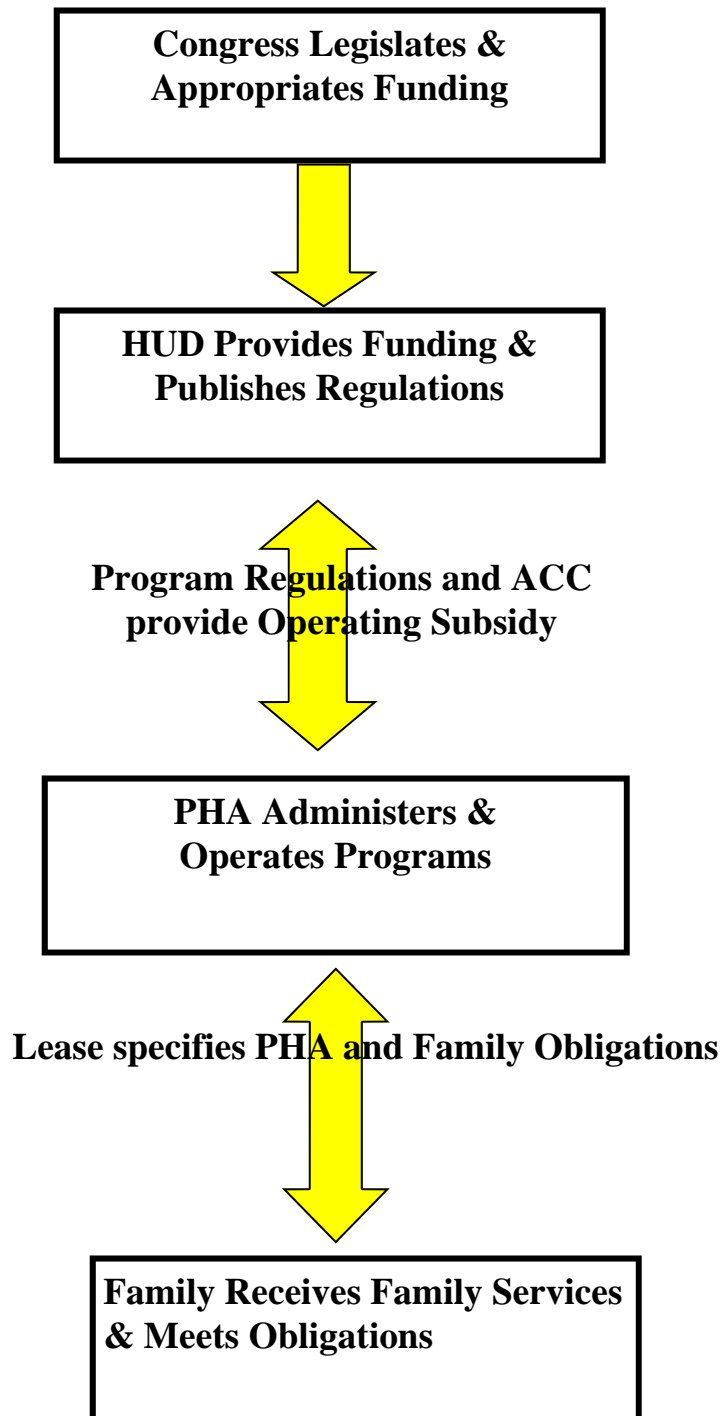
## **1-II.C. PUBLIC HOUSING PARTNERSHIPS**

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

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

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 PHAs
- Allocate capital funding to PHAs
- Provide technical assistance to PHAs on interpreting and applying program requirements
- Monitor PHA compliance with program requirements and PHA performance in program administration.

### **What does OHA do?**

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

- Establish local policies
- Review applications from interested applicant families to determine whether applicants are eligible for the program
- Maintain waiting list and select families for admission
- 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)
- OHA uses 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, OHA'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 and house rules.
- Provide OHA with complete and accurate information, determined by OHA to be necessary for administration of the program
- Cooperate in attending all appointments scheduled by OHA
- Allow OHA to inspect the unit at reasonable times and after reasonable notice
- Take responsibility for care of the housing unit, including any damages caused by the family, guest or person(s) under the control of the family.
- Not engage in drug-related or violent criminal activity
- Notify OHA 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 OHA of any changes in family composition
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

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

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

Applicable regulations include:

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

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

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

The ACOP is OHA's written statement of policies used to carry out the housing program in accordance with federal law and regulations, and HUD requirements and the Authority's Moving to Work agreement with HUD dated March 31, 2004. 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 OHA'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. OHA is responsible for complying with all HUD regulations pertaining to public housing unless exempted by the MTW agreement or policies adopted pursuant to this agreement. If such changes conflict with this plan, HUD regulations will have precedence.

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

,HUD regulations contain requirements of inclusion in OHA's written policy. This ACOP cover OHA policies on these subjects:

- The organization of the waiting list and how families are selected and offered available units, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening OHA 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 OHA of amounts the family owes OHA (Chapter 15 and 16)
- Interim redeterminations of family income and composition (Chapter 9)
- Policies regarding community service requirements; (Chapter 11)
- Polices 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 policy that emphasizes the importance of consistency. The ACOP supports that goal by clearly defining PHA policy for PHA management and staff.

A primary focus of programs like HUD's Rental Integrity Monitoring (RIM) program has been consistent in how PHAs conduct their business and in how HUD monitors PHA activities. HUD has made it clear that consistency in OHA conduct is important. Staff has an obligation to be familiar with and follow the ACOP to maintain consistency in applying OHA policy. 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, notices, and legal opinions, and
- Optional, non-binding guidance, including guidebooks, notices that have expired and recommendations from individual HUD staff.

HUD expects PHAs to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies OHA has adopted. OHA's 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 a PHA with a "safe harbor." If a PHA 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 PHAs 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**

OHA 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 OHA, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

#### PHA Policy

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

## Chapter 2

### FAIR HOUSING AND EQUAL OPPORTUNITY

#### INTRODUCTION

This chapter explains the laws and HUD regulations requiring PHAs 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 OHA's public housing operations.

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

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of OHA 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 OHA to ensure meaningful access to the public housing program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD's Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register* ("Notice of Guidance").

## **PART I: NONDISCRIMINATION**

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

Federal laws require PHAs to treat all applicants and tenant families equally, providing the same quality of service regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. OHA 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)
- Any applicable State laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff .

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

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

The Oakland Housing Authority (OHA) fully complies with all Federal, State and local nondiscrimination laws; the American with Disabilities Act; and the U.S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity.

OHA does not discriminate with respect to age, handicap, disability, race, color, creed, gender, familial status, national or ethnic origin, in the acceptance of applications, in the leasing of rental housing or related facilities (including land) or in the provision of housing assistance for any project or projects under its jurisdiction (covered by an Annual Contributions Contract under the United States Housing Act of 1937), or in the use or occupancy thereof.

In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, no otherwise qualified individual with handicaps shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefit of, or be subjected to discrimination under any program or activity of OHA. OHA will take appropriate measures to ensure that the individual with disabilities shall have equal access to available services, programs, and activities offered. Such appropriate measures include, but are not limited to:

1. provision of telecommunication devices for the deaf;
2. provision of sign language interpreters, as requested;
3. provision of readers and amanuenses, as requested;
4. utilization of barrier-free meeting places;
5. provision of a discrimination complaint procedure.

### **Discrimination Complaints**

#### **OHA Policy**

No person shall be excluded from participation in or be denied the benefits of, or otherwise subjected to discrimination as defined by applicable laws. Accordingly, OHA will assist any family that believes they have suffered illegal discrimination by providing them copies of the appropriate housing discrimination forms. OHA will also assist families in completing the forms, if requested. The address of the nearest Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity will also be provided, as well as the California Department of Fair Employment and Housing.

## **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.

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

The OHA 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)].

#### **OHA Policy**

OHA 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 OHA, by including the following language:

“If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the OHA 504/ADA Coordinator at (510) 874-1513”

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

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

A “reasonable accommodation” is a change, exception, or adjustment to a rule, 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 rules, policies practices and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act .

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the OHA, 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), OHA 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 an OHA-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 OHA staff
- Displaying posters and other housing information in locations throughout OHA'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 OHA 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].

### **OHA Policy**

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

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

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

## **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, OHA 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 OHA's programs and services.

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

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to OHA, OHA 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, OHA 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.
- OHA must request only information that is necessary to evaluate the disability-related need for the accommodation. OHA may not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

## **2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION**

PHA must approve a request for an accommodation if the following three conditions are met.

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

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

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

### **OHA Policy**

After a request for an accommodation is presented, OHA will respond, in writing, within 15 business days.

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

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

If OHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, OHA will notify the family, in writing, of its determination within 15 business days from the date of the most recent discussion or communication with the family. The notice will inform the family of the right to appeal OHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

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

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

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

To meet the needs of persons with hearing impairments, TTD (text telephone display) communication will be available.

To meet the needs of persons with vision impairment, large-print and one-on-one assistance will be provided upon request. When visual aids are used in public meetings or presentations, or in meetings with OHA 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**

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

- PIH 2002-01 (HA), Accessibility Notice
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

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

- This policy, the Admissions and Continued Occupancy Policy, describes the key policies that govern OHA's responsibilities with regard to physical accessibility.
- Notice PIH 2006Change or -03(HA) Accessibility Notice (which must be posted in the public housing offices in a conspicuous place) summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- The PHA Plan provides information about self-evaluation, needs assessment, and transition plans.

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

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

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

When applicants with disabilities are denied assistance, the notice of denial must inform them of their right to request an informal hearing and informal review [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 OHA's grievance process [24 CFR 966.4(1)(3)(ii)].

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

In addition, the OHA 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 Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register*.

#### **OHA Policy –**

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

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

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

## **2-III.B. SERVICES FOR NON-ENGLISH SPEAKING AND LIMITED ENGLISH SPEAKING APPLICANTS AND PARTICIPANTS**

### **OHA Policy**

The Authority is committed to complying with applicable Federal, State and local laws regarding provision of services to non-English and limited English speaking persons. Applicants and participants may request an informal hearing if they have not received appropriate language access accommodation. (Refer to Chapter 14)

The Authority will, at a minimum, take the following actions:

### **ORAL INTERPRETATION**

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

Where feasible, OHA will make every effort to hire and have bilingual staff or access to people who speak languages other than English, to assist non-English-speaking families.

OHA utilizes the Language Line phone service to conduct in-office interpretation if a multilingual staff person is not available to provide translation services.

### **WRITTEN TRANSLATION**

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

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

OHA will provide written translations for each eligible LEP language as determined appropriate.

### **WAITING LIST**

OHA will publish outreach and application materials for Waiting List openings in any languages required by the City's Equal Access Ordinance. In addition, the Authority will publish outreach and application materials in additional languages based on consultation with the City's Language Access staff, local community-based organizations and an analysis of Census data.

OHA will utilize local nonprofits and service providers, as well as print, radio and television media, to ensure that information on Wait List openings reaches as many limited English proficient persons as possible.

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

After completing the four-factor analysis (see page 2-12) and deciding what language assistance services are appropriate, PHA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

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

If it is determined that PHA serves very few LEP persons, and PHA has very limited resources, PHA will not develop a written LEP plan, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants will be contacted for input into the process.

If PHA determines it is appropriate to develop a written LEP plan, the following five steps will be taken: (1) identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LEP plan.

**EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS [24 CFR Parts 8.3, 25.104, and 100.201]**

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

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

The phrase “physical or mental impairment” includes:

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

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

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

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as OHA) 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

OHA 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 OHA 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 OHA.
  - Have income at or below HUD-specified income limits.
  - Qualify on the basis of citizenship or the eligible immigrant status of family members.
  - Provide social security number information for family members as required.
  - Consent to the OHA's collection and use of family information as provided for in OHA-provided consent forms.
- OHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or OHA.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and OHA 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 the OHA to deny admission.

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

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

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

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

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

#### **Family**

To be eligible for admission, an applicant must qualify as a family. *Family* is defined by HUD.

“Family” means:

- one or more adult persons with a child or children, including an emancipated minor as defined in Section 7002 of the California Civil Code; or
- two or more adult persons sharing residency whose income and resources are available to meet the family’s needs and who are either related by blood, marriage or operation of law, or have evidenced a stable family relationship. This includes multi-generational and other family compositions; or
- a single person 62 years of age or over; or
- a single person with disabilities; or
- the remaining member of a tenant family; or
- single persons who otherwise are eligible; or
- any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

There may also be considered as part of a family other persons who will live regularly as part of the family group (including members of the family temporarily absent such as students or members of the military) and whose income and resources are available for use in meeting the living expenses of the group. Lodgers may not be included in the family. The definition of “Family” includes a person living alone during the temporary absence of a family member who will later live regularly as a part of the family, such as:

- Children temporarily absent from the home due to placement in foster care
- Unborn children and children in the process of being adopted (for determining bedroom size but not for determining income limits).

**Household**

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

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

#### **Family Break-up**

##### OHA 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.

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

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

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

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

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of a resident family who remains in the unit when other members of the family have left the unit [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.

The family may designate any qualified family member as the head of household. A qualified family member means a person that meets all eligibility program requirements.

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. COHEAD, SPOUSE, AND OTHER ADULT**

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

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.

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. DEPENDENT [24 CFR 5.603]**

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, 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**

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

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. The dependants can only be claimed by one family member.

If there is a dispute about which family should claim them, the OHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

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

A *full-time student* (FTS) is a person who is 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 cohead, 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. FULL-TIME COLLEGE STUDENTS OF NON-PARENTAL/GUARDIAN HOUSEHOLDS**

**Full-time college students of non-parental/guardian household are not eligible for admission to the Housing Choice Voucher, Projected-based Voucher, Public Housing and Section 8 Mod-Rehabilitation Programs unless students meet the following eligibility standards:**

- 1. The student must be age and or be an emancipated minor under state law.**
- 2. The student must be income eligible for admission.**

**The Housing Authority is required to verify and include the following source of incomes for full-time college students of non-parental/guardian household:**

- 1. Financial support such as money, food, clothing, personal items and entertainment. The financial support must come from an outside source such as parents or guardians in a forms of “periodic and determinable allowance” or “ regular contributions or gifts.”<sup>2</sup>. Athletic scholarship that is available for housing cost.**

### **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 at least 50 years of age but below the age of 62 [24 CFR 945.105].

#### **Elderly Family**

An *elderly family* is one in which the head, spouse, cohead, 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]**

#### **Persons with Disabilities**

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

As discussed in Chapter 2, the OHA 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 cohead is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides. (24 CFR Sec. 5.403)

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 OHA 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 OHA premises [24 CFR 966.4(f)].

A resident family must notify OHA when overnight guests will be staying in the unit for more than 3 days. A guest can remain in the unit no longer than 14 consecutive days or a total of 30 cumulative calendar days during any 12 month period.

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 50 percent of the time, are not subject to the time limitations of guests as described above.

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

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

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

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

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

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

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

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

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

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

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

Generally an individual who is or is expected to be absent from the public housing 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 public housing 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**

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

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

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

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

**Absent Head, Spouse, or Cohead**

An employed head, spouse, or cohead absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

**Individuals Confined for Medical Reasons**

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

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

**Return of Permanently Absent Family Members**

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

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

*Live-in aide* means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

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

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

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional of the family's choosing, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member.

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

OHA will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 966.4(d)(3)(i)]:

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

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

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

Within **15** business days of receiving a request for a live-in aide, including all required documentation related to the request, OHA will notify the family of its decision in writing.

## PART II: BASIC ELIGIBILITY CRITERIA

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

#### **Income Limits**

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

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

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

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

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

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

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

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

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

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

If admissions of extremely low-income families to the OHA's housing choice voucher program during an OHA fiscal year exceed the 75 percent minimum targeting requirement for that program, such excess shall be credited against the OHA'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 OHA fiscal year
- Ten percent of waiting list admission to the OHA's housing choice voucher program during OHA 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 the OHA'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, cohead, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

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

In general, citizens and nationals are required to submit a signed 214 declaration form that claims their status. However, HUD regulations permit OHA to request additional documentation of their status, such as a passport.

Family members who declare citizenship or national status will not be required to provide additional documentation unless OHA 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 OHA's 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 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]. These include Marshall Islands, the Federated States of Micronesia, and Palau.

### ***Ineligible Noncitizens***

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. OHA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

### **Mixed Families**

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

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

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

When OHA 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, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with the OHA. The informal hearing with OHA 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, OHA 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, OHA 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.

OHA 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 as amended by MTW]**

All family members must provide documentation of: (1) a valid Social Security Number (SSN) or (2) a certification stating that no SSN has been issued. If a family member who is required to execute a certification is less than 18 years old, the certification must be executed by the individual's parent or guardian [24 CFR 5.216(j)]. Assistance cannot be provided to a family until all SSN documentation requirements are met. A detailed discussion of acceptable documentation is provided in Chapter 7.

If a new member who is under the age of 18 is added to the family, the new member's SSN documentation must be submitted at the family's next interim or regular reexamination, whichever comes first. If the new member is over the age of 18, that person must provide SSN documentation as a part of the eligibility determination and prior to being added to the lease..

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

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

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

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

## PART III: DENIAL OF ADMISSION

### 3-III.A. OVERVIEW

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

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

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

PHAs are required to establish standards that prohibit admission of an applicant to the public housing program if they have engaged in certain criminal activity or if the OHA has reasonable cause to believe that a household member's current use or pattern of use of illegal drugs, and/ 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 or neighbors.

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

HUD requires OHA to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 5 years for drug-related criminal activity.
- OHA will not admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 5 years for drug-related criminal activity.
- OHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)]. OHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.  
In determining reasonable cause, OHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use, sales, possession or abuse of illegal drugs or the abuse of alcohol.
- 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. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION**

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

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

Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories receive points.

OHA is responsible for screening family behavior and suitability for tenancy. In doing so, OHA may consider an applicant's history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants.

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

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

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

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

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

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

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

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

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

HUD authorizes PHAs 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, consideration must be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense).

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

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

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

OHA 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.D. SCREENING**

#### **Screening for Eligibility**

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

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

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

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

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

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

OHA is responsible for the screening and selection of families to occupy public housing units. OHA 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.

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

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

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

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

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

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

PHA and landlord references for the past five 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 OHA 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 OHA 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.

If previous landlords or the utility company do not respond to requests from OHA, 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 five years, gathering information on whether the applicant kept a unit clean, safe and sanitary; whether they violated health or safety codes; whether any damage was done by the applicant to a current or previous unit or the development, and, if so, how much the repair of the damage cost; whether the applicant's housekeeping caused insect or rodent infestation; and whether the neighbors complained about the applicant or whether the police were ever called because of disturbances.

Police and court records within the past five 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.

### **Screening Employee Applicants/Clients**

An employee of OHA who is a client or who is related to a client has a responsibility to avoid any conflict of interest that might lead to unequal treatment. Therefore, the following standards are to be employed in all such circumstances.

Neither employees, nor their staff if they are a Manager or Supervisor, shall handle matters related to their own cases or to the cases(s) of member(s) of their family.

Employees shall be responsible for reporting to the Director of Human Resources and the Deputy Executive Director or his designee any potential or actual conflict of interest. If the employee is unsure whether or not a conflict of interest exists, the employee shall refer the matter to the Director of Human Resources and the Deputy Executive Director for a determination.

It shall be the responsibility of the Deputy Executive Director or his designee to ensure that any actions or decisions taken within the his or her department affecting any employee's participant status or the participant status of an employee's relative are in accordance with all applicable policies and procedures. OHA shall ensure that the employee or employee's relative shall neither suffer any loss of benefit nor receive any gain of benefits as a result, direct or indirect, of her/his employment at OHA or her/his relationship to an OHA employee. As such:

- Any time action is taken or a decision is made which affects the applicant or participant status of an OHA employee or a relative of an OHA employee in any way, all OHA paperwork must be received and signed by the appropriate Director before the action or decision becomes effective.
- Each initial determination of eligibility and each selection to a program of an OHA employee or a relative of an OHA employee shall be forwarded to the Deputy Executive Director or his designee for review and final approval. A certification stating that all determinations and actions taken have been reviewed pursuant to applicable policies and procedures.

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

#### **Evidence**

OHA 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 PHAs 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 that OHA 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, OHA may consider factors, which might indicate a reasonable probability of favorable future conduct.

OHA will consider the following factors when 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

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

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

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

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

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 OHA request.

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

If the family includes a person with disabilities, the OHA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8. Additionally, the family has the right to request a grievance hearing if they are denied admission.

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

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

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

If an OHA 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 OHA 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)].

#### **OHA Policy**

OHA conducts criminal records checks for all adult applicants. Such checks include whether or not an individual has engaged in the destruction of property, engaged in violent activity against another person, or have interfered with the right to peaceful enjoyment of the premises of other residents. The checks will also include sex offender registration information. All criminal record checks will be conducted in conjunction with a current criminal investigation, and information will be provided to staff on a “needs-to-know, right-to-know” basis.

If the records check is not tied to a current investigation, OHA may obtain an individual’s criminal record from the Alameda County Consolidated Criminal Records Office (CCR), 15001 Foothill Blvd, San Leandro, CA, 94578, (510) 667-3190.

In order to obtain such information, all adult household members may be required to sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

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

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

### **Person with Disabilities [24 CFR 5.403]**

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

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:  
Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months  
In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.
- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C.6001(8)], which defines developmental disability in functional terms as:  
A severe, chronic disability of a person 5 years of age or older which:
  - Is attributable to a mental or physical impairment or combination of mental and physical impairments
  - Is manifested before the person attains age twenty-two
  - Is likely to continue indefinitely
  - Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and responsive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency
  - Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.”
- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

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

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

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

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

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

(1) Physical or mental impairment includes:

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

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

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

(4) Is regarded as having an impairment means:

- (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation
- (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment
- (c) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment

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

The OHA 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 OHA to receive preferential treatment.

HUD regulations require that OHA 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 the OHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and OHA policies for taking applications, managing the waiting list and selecting families from the waiting list. OHA's policies for assigning unit size and making unit offers are contained in Chapter 5. Together, Chapters 4 and 5 of the ACOP comprise OHA'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 OHA will handle the applications it receives.

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

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

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

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

This part describes the policies that guide OHA'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 OHA'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 OHA 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 OHA.

A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 120 days from the date of application. Under the two-step application process, OHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and the amount of rent the family will pay when selected from the waiting list.

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

OHA 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 OHA application process.

If an applicant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability or LEP, OHA treats the information as a request for a reasonable accommodation or an accommodation. Any issues regarding this process are subject to the informal hearing processes as stated in Chapter 14.

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

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

#### **Limited English Proficiency**

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

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

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

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

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

If OHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, OHA will send written notification of the ineligibility determination within 45 calendar days of receiving a completed application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal hearing and explain the process for doing so (see Chapter 14).

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

OHA will send written notification of the preliminary eligibility determination within 45 calendar days of receiving a completed application. If applicable, the notice will also indicate the waiting list preference(s) for which the family appears to qualify.

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

Applicants will be placed on the waiting list according to OHA preference(s) and appropriate applicable procedures.

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

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

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

OHA 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 OHA 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**

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

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

- Name and social security number of head of household
- Unit size and number of family members
- Amount and source of annual income
- Accessibility requirement, if any
- Date and time or waiting list opening date and lottery number
- Household type (family, elderly, disabled)
- Admission preference, if any
- Race and ethnicity of the head of household
- The specific site(s) selected for site-based waiting list.

OHA will maintain one single community-wide waiting list for its developments. Within the list, OHA 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).

OHA will adopt site-based waiting lists if determined necessary.

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 OHA 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)].

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

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

### **Closing the Waiting List**

OHA is permitted to close the waiting list, in whole or in part, if it has an adequate pool of families to fill its developments. OHA 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].

OHA will close the waiting list when the estimated waiting period for housing applicants on the list reaches 24 months for the most current applicants. Where OHA has particular preferences or other criteria that require a specific category of family, OHA 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. OHA will publish a notice in local newspapers of general circulation, media that target Limited English Populations (LEP), and other suitable media outlets that the OHA is reopening the waiting list. Such notice must comply with HUD fair housing requirements. OHA specify who may apply, and where and when applications will be received.

OHA 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.

OHA will give public notice by publishing the relevant information in suitable media outlets including, but not limited to community based organizations, newspapers, and on-line on our OHA website at [www.oakha.org](http://www.oakha.org) :

**OHA is committed to providing safe and decent housing to all eligible individuals and families. Community outreach, during the open application period, is a means of ensuring unrestricted participation.**

**In order for eligible families to be aware of the various public housing programs and availability, OHA will publish advertisements in newspapers of general circulation, ethnic and gender focused publications, and other appropriate resources.**

**OHA will distribute fact sheets to the broadcasting media and initiate personal contacts with news media.**

**The status of housing availability may be shared with other community service providers to inform them of eligibility requirements and guidelines so that proper referrals to OHA will be made.**

**Marketing and informational materials will be subject to the following:**

- (a) compliance with Fair Housing Act requirements on wording, logo, size of type, etc. (24 CFR 109.30(a);**
- (b) providing an accurate description of the housing units, application process, waiting list and preference structure;**
- (c) using clear and easy to understand terms and will use more than strictly English-language print media;**
- (d) making clear who is eligible: low income individuals and families; working and non-working people; and people with both physical and mental disabilities; and**
- (e) specifying that reasonable accommodations will be made for persons with disabilities.**

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

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

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

OHA 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

OHA outreach efforts are 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 or families who are least likely to apply.**

OHA will monitor the characteristics of the population being served and the characteristics of the population as a whole OHA'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**

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

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

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

HUD requires the OHA 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 OHA's request for information or updates because of the family member's disability, OHA 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.

The waiting list will be updated every two year to ensure that all applicants and applicant information is current and timely.

To update the waiting list, OHA will send an update request via first class mail, or e-mail 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 OHA 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.

The family's response must be in writing and may be delivered in person, by mail, or by fax. Responses should be postmarked or received by OHA not later than 30 business days from the date of the OHA letter.

If the family fails to respond within 30 business days, the family will be removed from the waiting list without further notice.

If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list 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 15 business days to respond from the date the letter was re-sent. If the family fails to respond within this time frame, the family will be removed from the waiting list without further notice.

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 OHA 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 OHA error, or to circumstances beyond the family's control.

## **Removal from the Waiting List**

The OHA will remove applicants from the waiting list if they have requested that their name be removed in writing, in person or by e-mail. In such cases no informal hearing is required.

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

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

## **PART III: TENANT SELECTION**

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

OHA must establish tenant selection policies for families being admitted to public housing [24 CFR 960.201(a)]. The OHA must not require any specific income or racial quotas for any developments [24 CFR 903.2(d)]. OHA 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 OHA 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.

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

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

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

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

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

OHA 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 OHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the OHA 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)].

The OHA will use the following preferences to select families from the waiting list:

- (1) A Veterans Preference (as required by state law);
- (2) A Residency Preference (for persons living or working in Oakland)
- (3) A preference for the Elderly/Disabled over other singles; and

Applicants to the public housing conventional program, within the above preferences, will be sorted into two categories. The categories are:

##### **Category 1 – Self-Sufficient**

At least fifty percent of household income from gainful employment or minimum of twenty hours of work per week, or participation in job training or educational programs and those who are elderly or disabled. ***Working is defined as:*** At least 50% of household income is from gainful employment or a minimum of 20 hours of work per week or engaged, and in good standing, in an approved CalWORKS activity and those who are elderly and disabled.

##### **Category 2 – Non-Self-Sufficient**

A date and time, or lottery number if a number of applications are received at the same time, preference (tiebreaker when all else is equal).

For applicants to the public housing conventional program, within the above preferences, the list will be sorted into two categories.

Fifty-percent of the applicants will be pulled from each of the two categories.

### **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 OHA'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, OHA may skip non-ELI families on the waiting list in order to select an ELI family.

If a PHA also operates a housing choice voucher (HCV) program, admissions of extremely low-income families to the PHA's HCV program during a PHA fiscal year that exceed the 75% minimum target requirement for the voucher program, shall be credited against the PHA'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 the PHA fiscal year; (2) ten percent of waiting list admissions to the PHA's housing choice voucher program during the PHA fiscal year; or (3) the number of qualifying low-income families who commence occupancy during the fiscal year of PHA 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.

### **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. OHA must give elderly and disabled families equal preference in selecting these families for admission to mixed-population developments. OHA 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, OHA 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. OHA may not discriminate against elderly or disabled families that include children (Fair Housing Amendments Act of 1988).

### **Units Designated for Elderly**

OHA has designated 5 development projects specifically for elderly families. OHA has a HUD-approved allocation plan for the following sites:

- Oak Grove North
- Oak Grove South
- Adel Court
- Palo Vista Gardens
- 1621 Harrison Street

Among the designated developments, the OHA 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, the OHA 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 cohead is at least 50 years old, but is less than 62 [24 CFR 5.403].

The decision of any 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 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)].

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

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

OHA'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 a PHA with fewer than 100 public housing units; mixed population or developments designated specifically for elderly or disabled families; developments operated by a PHA 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, OHA must comply with the following steps:

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

OHA determines the average income of all families in all covered developments on an annual basis.

Step 2. OHA 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, OHA has the option of adjusting its income analysis for unit size in accordance with procedures prescribed by HUD.

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

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

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

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

Depending on local circumstances OHA'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 the OHA in consultation with the residents and the community through the annual plan process to be responsive to local needs and OHA strategic objectives

A family has the sole discretion whether to accept an offer of a unit made under the OHA's deconcentration policy. OHA must not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under OHA'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, OHA will be considered to be in compliance with the deconcentration requirement and no further action is required.

### **Deconcentration Incentives**

OHA has 3 general occupancy (family) public housing developments covered by the deconcentration rule. None of these covered developments have average incomes above or below 85% to 115% of the average incomes of all such developments. The Oakland Housing Authority will analyze developments on a regular basis according to the deconcentration rule.

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

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

Families will be selected from the waiting list based on preference. Among applicants with the same preference, families will be selected according to the date and time or random selection process.

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

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

Factors such as deconcentration or income mixing and income targeting will also be considered in accordance with HUD requirements and OHA policy.

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

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

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

The notice will inform the family of the following:

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

- Who is required to attend the interview

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

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

- Other documents and information that should be brought to the interview

If a notification letter is returned to OHA with no forwarding address, the family will be removed from the waiting list without further notice. Such failure to act on the part of the applicant prevents OHA from making an eligibility determination. Look at Josephs language

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

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

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

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

The head of household and all adult members of the household must attend the interview together. 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 OHA.

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

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

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

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

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

Interviews will be conducted in English. For limited English proficient (LEP) applicants, OHA will provide translation services in accordance with OHA's LEP plan. (Refer to Chapter 2)

If the family is unable to attend a scheduled interview, the family should contact the OHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, OHA will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without OHA approval will have their applications made inactive based on the family's failure to supply information needed to determine eligibility. The second appointment letter will state that failure to appear for the appointment without a request to reschedule will be interpreted to mean that the family is no longer interested and their application will be made inactive. Such failure to act on the part of the applicant prevents OHA from making an eligibility determination; therefore OHA will not offer an informal hearing.

The family will be informed of their requirement to attend a mandatory orientation.

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

OHA must verify all information provided by the family (see Chapter 7). Based on verified information related to the eligibility requirements, including OHA suitability standards, OHA 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)].

OHA will notify a family in writing of their eligibility within 10 business days of the determination and their scheduled date for an orientation date. OHA will provide the time frame for occupancy.

OHA 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)].

If OHA determines that the family is ineligible, OHA 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 OHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the OHA can move to deny the application. See Section 3-III.F. for OHA's policy regarding such circumstances.



## Chapter 5

### OCCUPANCY STANDARDS AND UNIT OFFERS

#### INTRODUCTION

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

Policies in this chapter are organized in two parts.

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

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

#### PART I: OCCUPANCY STANDARDS

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

Occupancy standards are established by OHA 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 OHA will use to determine the size unit for which a family qualifies, and includes the identification of the minimum and maximum number of household members for each unit size. This part also identifies circumstances under which an exception to the occupancy standards may be approved.

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

In selecting a family to occupy a particular unit, OHA 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. PHAs are 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 OHA does determine the size of unit the family qualifies for under the occupancy standards, OHA does not determine who shares a bedroom/sleeping room.

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

OHA will use the same occupancy standards for each of its developments.

OHA occupancy standards are as follows:

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

A live-in aide will be allocated a separate bedroom. No additional bedrooms will be provided for the live-in aide's family. OHA will comply with occupancy standards prior to approving the live-in aide.

Single person families will be allocated a zero or one bedroom.

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

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

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

### **Types of Exceptions**

When evaluating exception requests OHA will consider the size and configuration of the unit. In no case will OHA 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, OHA 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**

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, OHA will encourage the resident to make the request in writing using a reasonable accommodation request form.

However, OHA 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.

OHA will notify the family of its decision within 15 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**

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

OHA 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**

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

Two (2) locations: The applicant will be offered two suitable units in different sites.. The offers will be made in sequence and the applicant must refuse the first offer in writing before a second offer is made.

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

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

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

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

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

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 OHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family must 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

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.

**Unit Refusal Without Good Cause**

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

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

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

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

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

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

#### OHA 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, OHA will offer the unit to a non-disabled applicant.

When offering an accessible unit to a non-disabled applicant, OHA 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, OHA's policies for offering units designated for elderly families only are described in OHA's Designated Housing Plan.



## Chapter 6

### INCOME AND RENT DETERMINATIONS

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

#### INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's rent payment. OHA 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 OHA 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 OHA policies for calculating annual income are found in Part I.

Part II: Adjusted Income. Once annual income has been established, HUD regulations require OHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and OHA 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

### 6-I.A. OVERVIEW

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

5.609 Annual income.

(a) Annual income means all amounts, monetary or not, which:

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

2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) 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.

A household who consist of one or two persons who are either elderly and/or disabled may have their income calculated every three years. This calculation is based on a fix cost of living. Family composition and medical expenses may be evaluated on an annual basis.

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

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

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

**Temporarily Absent Family Members**

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

An individual who is or is expected to be absent from the assisted unit for a maximum of 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. 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***

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

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

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

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

***Absent Head or Cohead***

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.(Refer to Chapter 3)

***Individuals Confined for Medical Reasons***

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

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

***Joint Custody of Children***

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

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, OHA will make the determination based on available documents such as court orders or an IRS return showing which family has claimed the child for income tax purposes. (Refer to Chapter 3.)

### **Caretakers for a Child**

If neither a parent nor a designated guardian remains in a household receiving assistance, OHA 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, OHA 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. (Refer to Chapter 3.)

## **6-I.C. ANNUAL INCOME**

OHA is required to count all income from a source outside the family during the 12-month period following admission or annual reexamination effective date. [24 CFR 5.609(a)(2)].

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

OHA will use current or historical circumstances to determine income for the coming 12-month period. HUD authorizes PHAs 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)]
- OHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

#### **OHA Policy**

OHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income. Anytime current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to OHA to show why the historic pattern does not represent the family's anticipated income.

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

If OHA 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.

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, OHA 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 OHA's policy on reexaminations does not require interim reexaminations for other types of changes.

## **Using Up-Front Income Verification (UIV) to Calculate Income**

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

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

### **OHA Policy**

OHA procedures for determining annual income will include the use of UIV methods approved by HUD. If the UIV information is not available, OHA will use with family-provided documents dated within the last 60 days of OHA interview date.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **OHA Policy**

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

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

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

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

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

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

#### **OHA Policy**

Sporadic income is income that is 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, or cohead) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

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

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

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

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

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

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

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

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

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

#### **OHA Policy**

OHA 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].

OHA 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, OHA 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 OHA'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.

**OHA Policy**

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

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

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

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

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

#### **Eligibility**

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

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

### **Calculation of the Disallowance**

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

#### **OHA Policy**

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

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

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

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

#### **OHA Policy**

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

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

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

#### ***Lifetime Limitation***

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

#### **OHA Policy**

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

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

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

#### **Business Expenses**

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

##### **OHA Policy**

To determine business expenses that may be deducted from gross income, OHA 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 PHAs to deduct from gross income expenses for business expansion.

##### **OHA 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 OHA to deduct from gross income the amortization of capital indebtedness.

#### **OHA Policy**

*Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means OHA 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 OHA 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.

#### **OHA 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, OHA 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**

#### **OHA Policy**

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

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

### **Overview**

There is no asset limitation for participation in the public housing program. However, HUD requires that OHA 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, OHA 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 OHA policies related to each type of asset.

### **General Policies**

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

OHA 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 OHA 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) OHA 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, OHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

#### **OHA 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 OHA 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 PHAs 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.

#### **OHA 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) [RHIP 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 the family has net family assets in excess of \$50,000, OHA 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. (Proposed Change under MTW)

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

It may or may not be necessary for OHA 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.”

#### **OHA Policy**

If an asset is owned by more than one person and any family member has unrestricted access to the asset, OHA 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, OHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, OHA will prorate the asset evenly among all owners. This will be established in our procedures.

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

HUD regulations require the OHA 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***

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

#### **OHA Policy**

OHA 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 \$50,000.

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.

#### **OHA 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*

#### **OHA 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. OHA may verify the value of the assets disposed of if other information available to OHA 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.

#### **OHA Policy**

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

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

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

#### **OHA Policy**

In determining the market value of an investment account, OHA 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), OHA 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.

#### **OHA 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 OHA 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, OHA 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].

#### **OHA Policy**

In determining the value of personal property held as an investment, OHA will use the family's estimate of the value. However, OHA also may obtain an appraisal if appropriate to confirm the value of the asset. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

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

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

#### **OHA Policy**

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

### ***Life Insurance***

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

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

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

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

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

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

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

#### **OHA Policy**

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

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

## Periodic Payments Excluded from Annual Income

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

### OHA Policy

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

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)].  
*Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].

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

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

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

### **Overview**

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

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

OHA 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, OHA must include in annual income “imputed” welfare income. OHA must request that the welfare agency inform OHA when the benefits of a public housing resident are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

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

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

#### ***Offsets***

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

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

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

#### **Alimony and Child Support**

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

##### **OHA Policy**

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

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

#### **Regular Contributions or Gifts**

OHA 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)].

##### **OHA 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 OHA. For contributions that may vary from month to month (e.g., utility payments), OHA will include an average amount based upon past history.

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

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

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:
  - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
  - (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
  - (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
  - (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
  - (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
  - (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931).)

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

## PART II: ADJUSTED INCOME

### 6-II.A. INTRODUCTION

#### Overview

HUD regulations require OHA 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 (OHA) 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

##### OHA Policy

Generally, OHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and nonschool periods and cyclical medical expenses), OHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, OHA 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. OHA may require the family to provide documentation of payments made in the preceding year.

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

A deduction of \$480 is taken for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

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

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

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

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

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

**Definition of Medical Expenses**

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

**OHA Policy**

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

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

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

**OHA Policy**

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

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

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

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

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

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)]. The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

**OHA 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, OHA 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 OHA 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***

#### **OHA 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.

#### **OHA 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, OHA 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.

#### **OHA Policy**

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

#### **OHA Policy**

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

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

## **6-II.F. CHILD CARE EXPENSE DEDUCTION**

HUD defines *child care expenses* at 24 CFR 5.603(b) as “amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family’s household [VG, p. 26]. However, child care expenses for foster children that are living in the assisted family’s household, are included when determining the family’s child care expenses.

### **Qualifying for the Deduction**

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

##### **OHA 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, OHA 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***

##### **OHA 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 OHA.

***Furthering Education***

**OHA 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***

**OHA 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.

OHA 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].

#### **OHA 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, OHA 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. OHA 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***

#### **OHA 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, OHA 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.

#### **OHA 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, OHA will use the schedule of child care costs from Alameda County Social Services agency. Families may present, and OHA will consider, justification for costs that exceed typical costs in the area.

## **PART III: CALCULATING RENT**

### **6-III.A. OVERVIEW OF INCOME-BASED RENT CALCULATIONS**

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the tenant rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is called the utility reimbursement, which may be paid to the family or directly to the utility company by OHA.

#### **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)
- A minimum rent between \$0 and \$50 that is established by OHA

OHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

#### ***Minimum Rent [24 CFR 5.630]***

##### **OHA Policy**

The minimum rent for this locality is \$25.

**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.

OHA's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to OHA's 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.

**OHA Policy**

OHA 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].

**OHA Policy**

OHA 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 OHA to pay the reimbursement to the family or directly to the utility provider.

**OHA Policy**

OHA will make utility reimbursements to the family.

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

### **Overview**

If OHA establishes a minimum rent greater than zero, OHA 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 OHA 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.

#### **OHA 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.

#### **OHA 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.

**OHA 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).

**Implementation of Hardship Exemption**

***Determination of Hardship***

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

OHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

**OHA Policy**

OHA 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.

OHA 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.

**OHA 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.

OHA will make the determination of hardship within 30 calendar days.

***No Financial Hardship***

If OHA determines there is no financial hardship, OHA will reinstate the minimum rent and require the family to repay the amounts suspended.

For procedures pertaining to grievance hearing requests based upon the OHA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

**OHA Policy**

OHA will require the family to repay the suspended amount within 30 calendar days of OHA's notice that a hardship exemption has not been granted.

***Temporary Hardship***

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

**OHA Policy**

OHA will enter into a repayment agreement in accordance with OHA's repayment agreement policy (see Chapter 16).

***Long-Term Hardship***

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

**OHA 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.

### **6-III.C. UTILITY ALLOWANCES [24 CFR 965, Subpart E]**

#### **Overview**

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. When determining a family's income-based rent, the OHA 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, the OHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability [PH Occ GB, p. 172].

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies related to reasonable accommodations.

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

The OHA must review its schedule of utility allowances each year. Between annual reviews, the OHA must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based. Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective [PH Occ GB, p. 171].

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

#### **OHA Policy**

Unless the OHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

#### **6-III.D. PRORATED RENT FOR MIXED FAMILIES [24 CFR 5.520]**

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The OHA must prorate the assistance provided to a mixed family. The OHA 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 OHA 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.

#### **OHA Policy**

Revised public housing maximum rents will be applied to a family's rent calculation at the first annual reexamination after the revision is adopted.

For policies related to the establishment of the public housing maximum rent see Chapter 16.

### **6-III.E. FLAT RENTS AND FAMILY CHOICE IN RENTS [24 CFR 960.253]**

#### **Flat Rents [24 CFR 960.253(b)]**

The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient. There is no utility allowance or reimbursement with flat rents. When the family elects to pay the flat rent, the flat rent amount quoted to the family by OHA 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, OHA 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. OHA must document that flat rents were offered to families under the methods used to determine flat rents for OHA.

#### **OHA Policy**

The annual OHA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination.

OHA 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.

OHA must provide sufficient information for families to make an informed choice. This information must include OHA'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, OHA 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 OHA determines that a financial hardship exists, OHA must immediately allow the family to switch from flat rent to the income-based rent.

#### **OHA Policy**

Upon determination by OHA that a financial hardship exists, OHA 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 OHA to be appropriate

#### **OHA Policy**

OHA 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**

#### **OHA Policy**

Changes to flat rents, up or down, will not affect families paying flat rent until their next annual flat rent offer, at which time the family will be given the choice of switching back to income-based rent or of remaining on flat rent at the current (most recently adjusted) flat rent for their unit [PH Occ GB, pp. 137-138].

### **Flat Rents and Earned Income Disallowance [A&O FAQs]**

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

A family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their 48 month period would have the 12 cumulative months of full (100 percent) and Phase-in (50 percent) exclusion continue while paying flat rent as long as the employment that is the subject of the exclusion continues, and the 48-month lifetime limit would continue uninterrupted. A family paying flat rent could therefore see a family member's 48-month lifetime limit expire while the family is paying flat rent.

### **Flat Rents and Mixed Families [A&O FAQs]**

Mixed families electing to pay flat rent must first have a flat rent worksheet completed to see if the flat rent must be prorated. The worksheet is located in Appendix III of the *Form HUD-50058 Instruction Booklet*.

If the flat rent is greater than or equal to the public housing maximum rent, there is no proration of flat rent and the family pays the flat rent for the unit.

If the flat rent is less than the maximum rent, the worksheet will calculate a prorated flat rent.

The mixed family will pay the prorated flat rent.

### **Flat Rents and Annual Recertifications for Families**

On an annual basis, OHA is required to verify the following:

- Family Composition
- Community Service Requirement
- Annual Inspection

## EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

### 24 CFR 5.609

*(a) Annual income means all amounts, monetary or not, which:*

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

*(b) Annual income includes, but is not limited to:*

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31<sup>1</sup>; and

(B) Are not otherwise excluded under paragraph (c) of this section.

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<sup>1</sup> Text of 45 CFR 260.31 follows (next page).

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)

#### **HHS DEFINITION OF "ASSISTANCE"**

#### **45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

#### **260.31 What does the term "assistance" mean?**

(a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) [The definition of "assistance"] excludes:

(1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

## EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

### 24 CFR 5.609

(c) Annual income does not include the following:

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;
- (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
- (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

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

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

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits

- 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 therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

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**EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES**

**24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.**

*(a) Applicable programs.* The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

*(b) Definitions.* The following definitions apply for purposes of this section.

*Disallowance.* Exclusion from annual income.

*Previously unemployed* includes a person with disabilities 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 housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, 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 responsible entity 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.

*(c) Disallowance of increase in annual income—*

(1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve month exclusion and PHA se-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity 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 who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) *Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

## EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

### 24 CFR 5.615

#### **Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

*(a) Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

*(b) Definitions.* The following definitions apply for purposes of this section:

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603.

*Imputed welfare income.* The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefit reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

*(c) Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

*(d) Review of PHA decision.*

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief

explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

*(e) PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

## Chapter 7

### VERIFICATION

[24 CFR 960.259, 24 CFR 5.230]

#### INTRODUCTION

OHA 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. OHA must not pass on the cost of verification to the family.

OHA will follow the verification guidance provided by HUD in PIH Notice 2004-01 Verification Guidance ("VG") and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary OHA 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 OHA.

#### PART I: GENERAL VERIFICATION REQUIREMENTS

##### 7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION

[24 CFR 960.259, 24 CFR 5.230]

The family must supply any information that OHA or HUD determines is necessary to the administration of the program and must consent to OHA 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 and OHA 290103, Authorization Release Form. 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 OHA 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, OHA will deny admission to applicants and terminate the lease of tenants. The family may request a hearing in accordance with OHA's grievance procedures.

## **7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

### **HUD's Verification Hierarchy [VG, p. 11-14]**

HUD authorizes OHA to use five methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires OHA to use the most reliable form of verification that is available and to document the reasons when OHA uses a lesser form of verification.

#### **OHA Policy**

In order of priority, the forms of verification that OHA will use are:

1. Up-front Income Verification (UIV) whenever available
2. Third-party Written Verification/Third Party Oral Verification
3. Review of Documents
4. Self-Certification

Each of the verification methods is discussed in subsequent sections below. Exhibit 7-1 at the end of the chapter contains an excerpt from the Verification Guidance that provides guidance with respect to how each method may be used.

### **Requirements for Acceptable Documents**

#### **OHA Policy**

Any documents used for verification must be the original (not photocopies) and generally must be dated within 120 calendar days of the date they are provided to OHA. The documents must not be damaged, altered or in any way illegible.

OHA will accept documents dated up to 6 months before the effective date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, OHA would accept the most recent report.

Print-outs from web pages are considered original documents.

OHA 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 OHA and must be signed in the presence of an OHA representative

**E-File or File Documentation**

OHA 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 OHA 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.

### **7-I.C. UP-FRONT INCOME VERIFICATION (UIV)**

Up-front income verification (UIV) refers to OHA'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 OHA.

OHA restricts access to and safeguard UIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.

There may be legitimate differences between the information provided by the family and UIV-generated information. No adverse action can be taken against a family until OHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through OHA's informal review/hearing processes.

#### **Definition of Substantial Difference**

UIV information is used differently depending upon whether there is a *substantial difference* between information provided by the family and the UIV information. In "HUD Guidelines for Projecting Annual Income When UIV Data is Available," HUD recommends using \$200 per month as the threshold for a substantial difference. OHA will use the \$200 per month as the threshold for a substantial difference.

See Chapter 6 for OHA's policies on the definition of substantial difference and the use of UIV to project annual income and for OHA's threshold for substantial difference.

#### **When No Substantial Difference Exists**

If UIV information does not differ substantially from family information, the UIV documentation may serve as third-party written verification.

#### **When a Substantial Difference Exists [24 CFR 5.236(b)]**

When there is a substantial difference between the information provided by the UIV source and the family, OHA must request another form of third-party written verification and use any other verification methods (in priority order) to reconcile the difference(s).

## **7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION**

### **Reasonable Effort and Timing**

Third-party verification will be sent only once and if it is not returned with in 10 business days, OHA will use document review.

#### **OHA Policy**

OHA will diligently seek third-party verification using a combination of written and oral requests to verification sources. Information received orally from third parties may be used either to clarify information provided in writing by the third party or as independent verification when written third-party verification is not received in a timely fashion.

OHA may mail, fax, e-mail, or hand deliver third-party written verification requests and will accept third-party responses using any of these methods. OHA will send a written request for verification to each required source within 2 business days of securing a family's authorization for the release of the information and give the source 10 business days to respond in writing.

OHA will make a minimum of one attempt, which may be oral, to obtain third-party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file. Regarding third-party oral verification, OHA 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 OHA 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 Information is Late**

When third-party verification has been requested and the timeframes for submission have been exceeded, OHA will use the information from documents on a provisional basis. If OHA later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, OHA will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of OHA's interim reexamination policy.

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

#### ***Primary Documents***

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

#### ***Certain Assets and Expenses***

OHA 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].

OHA may determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification [VG, p. 15].

#### **OHA Policy**

OHA will use review of documents in lieu of requesting third-party verification when the market value of an individual asset or an expense is \$50,000 annually and the family has original documents that support the declared amount.

***Certain Income, Asset and Expense Sources***

OHA will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification [VG, p. 15].

For example, OHA will rely upon review of documents when OHA determines that a third party's privacy rules prohibit the source from disclosing information.

**OHA Policy**

OHA will determine that third-party verification is not available when there is a service charge for verifying an asset or expense *and* the family has original documents that provide the necessary information.

If the family cannot provide original documents, OHA will accept a self-certification will be acceptable as the only means of verification or on-line documentation. The cost of verification will not be passed on to the family.

## **7-I.E. REVIEW OF DOCUMENTS**

### **Using Review of Documents as Verification**

#### **OHA Policy**

In the event that Upfront income, third-party written or oral verification is unavailable, or the information has not been verified by the third party within 12 business days, the Authority will annotate the file accordingly and utilize documents provided by the family as the primary source if the documents provide complete information.

The Authority will accept verifications in the form of computerized printouts delivered by the family from the following agencies:

- Social Security Administration
- Veterans Administration
- Temporary Assistance to Needy Families (TANF) award letter
- Unemployment Compensation Board
- City or County Courts

All such documents, excluding government checks, will be photocopied and retained in the applicant file. In cases where documents are viewed which cannot be photocopied, staff viewing the document(s) will complete a Third Party Verbal Update form or document.

The Authority will accept the following documents from the family provided that the document is such that tampering would be easily noted:

- Consecutive and original wage stubs
- Bank statements
- Pension benefit statements letters
- Other documents noted in this Chapter as acceptable verification

The Authority will accept faxed documents and photocopies unless the original documents have been requested.

If third-party verification is received after documents have been accepted as provisional verification, and there is a discrepancy, the Authority will utilize the third-party verification.

## **7-I.F. SELF-CERTIFICATION**

#### **OHA 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 OHA.

OHA 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 OHA 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 an OHA representative

**PART II: VERIFYING FAMILY INFORMATION**

**7-II.A. VERIFICATION OF LEGAL IDENTITY**

**OHA Policy**

OHA 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>
<ol style="list-style-type: none"> <li>1. Current, valid driver's license or California identification card or</li> <li>2. U.S. passport or</li> <li>3. U.S. Military Identification Cards or</li> <li>4. Permanent Residence ID</li> </ol>	<ol style="list-style-type: none"> <li>1. Certificate of birth or</li> <li>2. Permanent Residence ID or</li> <li>3. Adoption papers or</li> <li>4. Custody agreement or</li> <li>5. Health and Human Services ID School records</li> </ol>

If none of primary documents are available for to establish legal identity for adults OHA will require three of either these documents:

- Original copy of a certificate of birth
- Church issued baptismal certificate
- U.S. military discharge (DD 214)
- Voter's registration card
- Company/agency identifications cards
- Hospital Records Identification

If none of these documents can be provided then the case would be forward to the department director who will make the determination based on regulations.

## **7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 as amended by MTW]**

Every family member must provide documentation of a valid social security number (SSN), or a self-certification stating that no SSN has been issued. The self-certification must be executed personally by any family member 18 or older, or by a parent or guardian for a minor.

### **OHA Policy**

OHA will also accept the following documents as evidence if the SSN is provided on the document:

- Driver's license

- Other identification card issued by a federal, state, or local agency, a medical insurance company or provider, or employer or trade union

- Payroll stubs

- Benefit award letters from government agencies; retirement benefit letters; life insurance policies

- Court records (real estate, tax notices, marriage and divorce, judgment or bankruptcy records)

  - An identification card issued by an employer or trade union

- Earnings statements or payroll stubs

  - Bank statements

  - IRS Form 1099

  - Verification of benefits or Social Security Number from Social Security Administration

If the family reports an SSN but cannot provide acceptable documentation of the number, OHA requires a self-certification stating that documentation of the SSN cannot be provided at this time. OHA will require documentation of the SSN within 60 calendar days from the date of the family member's self-certification mentioned above. If the family is an applicant, assistance cannot be provided until proper documentation of the SSN is provided.

### **OHA Policy**

OHA will instruct the family to obtain a duplicate card from the local Social Security Administration (SSA) office.

For individuals who are at least 62 years of age and are unable to submit the required documentation of their SSN within the initial 60-day period, OHA will grant an additional 60 calendar days to provide documentation.

Social security numbers must be verified only once during continuously-assisted occupancy. If any family member obtains an SSN after admission to the program, the new SSN must be disclosed at the next regularly scheduled reexamination.

The social security numbers of household members, such as live-in aids, must be verified for the purpose of conducting criminal background checks.

### **7-II.C. DOCUMENTATION OF AGE**

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

#### **OHA Policy**

If an official record of birth or evidence of social security retirement benefits cannot be provided, OHA 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. Refer to self-certification procedures.

Age must be verified only once during continuously-assisted occupancy.

**7-II.D. FAMILY RELATIONSHIPS**

Certification by the head of household normally is sufficient verification of family relationships.

**Absence of Adult Member**

**OHA Policy**

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

**Foster Children and Foster Adults**

**OHA Policy**

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

## **7-II.E. VERIFICATION OF STUDENT STATUS**

### **OHA Policy**

OHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

The family claims full-time student status for an adult other than the head, spouse, or cohead, or

The family claims a child care deduction to enable a family member to further his or her education.

## **7-II.F. DOCUMENTATION OF DISABILITY**

OHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. OHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. OHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If OHA receives a verification document that provides such information, OHA will not place this information in the tenant file. Under no circumstances will OHA request a resident's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at [www.os.dhhs.gov](http://www.os.dhhs.gov).

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

### **Family Members Receiving SSA Disability Benefits**

Verification of receipt of SSA benefits or SSI based upon disability is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions [VG, p. 23].

#### **OHA Policy**

For family members claiming disability who receive SSI or other disability payments from the SSA, OHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system when it is available, or HUD's Tenant Assessment Subsystem (TASS). If documentation from HUD's EIV System or TASS is not available, OHA will request a current (dated within the last 120 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), OHA will ask the family or assist the family in requesting a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or resident receives the benefit verification letter they will be required to provide it to OHA.

### **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.

#### **OHA Policy**

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

### **7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]**

#### **Overview**

Housing assistance is available to families that include at least one member who is a citizen, national, or eligible immigrant. 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 OHA 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.

OHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

#### **OHA Policy**

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

## **Eligible Immigrants**

### ***Documents Required***

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

### ***OHA Verification*** [HCV GB, pp 5-3 and 5-7]

For family members under the age of 62 who claim to be eligible immigrants, OHA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

For family members who age 62 or older are eligible immigrants. No further verification of eligible immigration status is required. Proof of age is required in manner described in 7-II.C. OHA will follow all USCIS protocols for verification of eligible immigration status.

## **7-II.H. VERIFICATION OF PREFERENCE STATUS**

OHA must verify any preferences claimed by an applicant.

### **OHA Policy**

OHA offers a preference a self-sufficiency to families, described in Section 4-III.B.

OHA verifies that the family qualifies for the working family preference based on the family's submission of the working member's most recent paycheck stub indicating that the working member works at least 20 hours per week. The paycheck stub must have been issued to the working member within the last thirty days.

OHA may also seek third party verification from the employer of the head, spouse, cohead or sole member of a family requesting a preference as a working family.

OHA verifies Veterans Preference by using the DD214 or other military documentation.

OHA verifies that the family was an Oakland resident or Residency Preference at the time the family applied for assistance.

OHA verifies that the family is not receiving project or tenant based Section 8 or Public Housing to be eligible for the Non-subsidized Preference.

OHA verifies the Elderly/Disabled preference in order for those families to receive a preference over other singles

### **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 OHA policies that supplement the general verification procedures specified in Part I of this chapter.

#### **7-III.A. EARNED INCOME**

##### **OHA Policy**

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

#### **7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME**

##### **OHA 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.

At any reexamination OHA 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, OHA 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 OHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

### **7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

#### **Social Security/SSI Benefits**

##### **OHA Policy**

To verify the SS/SSI benefits of residents, OHA will obtain information about social security/SSI benefits through The HUD EIV System or the Tenant Assessment Subsystem (TASS).

If benefit information is not available in HUD systems, OHA will assist the family in requesting benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov).

If the family is unable to provide the document(s) OHA will ask the family to request a. Once the resident has received the benefit verification letter they will be required to provide it to OHA.

## **7-III.D. ALIMONY OR CHILD SUPPORT**

### **OHA Policy**

The way OHA will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it *receives regular payments*, verification will be sought in the following order.

If payments are made through a state or local entity, OHA will request a record of payments for the past 12 months and request that the entity disclose any known information about the likelihood of future payments.

Third-party verification from the person paying the support

Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules

Copy of the latest check and/or payment stubs

Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it *receives irregular or no payments*, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

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

## **Unemployment Benefits**

## **Pensions**

### **7-III.E. ASSETS AND INCOME FROM ASSETS**

#### **Assets Disposed of for Less than Fair Market Value**

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. OHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

#### **OHA Policy**

OHA will verify, through the director or designee, the value of assets disposed of only if:  
OHA does not already have a reasonable estimation of its value from previously collected information, or  
The amount reported by the family in the certification appears obviously in error.

### **7-III.F. NET INCOME FROM RENTAL PROPERTY**

#### **OHA 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, OHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

**7-III.G. RETIREMENT ACCOUNTS**

**OHA Policy**

Families will be required to report retirement accounts.

### **7-III.H. INCOME FROM EXCLUDED SOURCES**

#### **OHA Policy**

OHA will verify all sources of income and will determine what sources will be excluded.

### **7-III.I. ZERO ANNUAL INCOME STATUS**

Families claiming to have no annual income will be required to execute verification forms to determine that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by the household. The families on zero income statuses will be evaluated every 60 days.

## **PART IV: VERIFYING MANDATORY DEDUCTIONS**

### **7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that OHA 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. OHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or cohead of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

#### **Elderly/Disabled Family Deduction**

See the Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. OHA will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

## **7-IV.B. MEDICAL EXPENSE DEDUCTION**

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

### **Amount of Expense**

#### **OHA Policy**

OHA will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

Third-party verification form signed by the provider, when possible

If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case OHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. OHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months

In addition, OHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

**Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62 or a person with disabilities. OHA 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 OHA'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.

**OHA 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****OHA Policy**

When anticipated costs are related to on-going payment of medical bills incurred in past years, OHA will verify:

The anticipated repayment schedule

The amounts paid in the past, and

Whether the amounts to be repaid have been deducted from the family's annual income in past years

### **7-IV.C. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

#### **Amount of Expense**

##### ***Attendant Care***

###### **OHA Policy**

OHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

Third-party verification form signed by the provider, when possible

If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months

##### ***Auxiliary Apparatus***

###### **OHA Policy**

Expenses for auxiliary apparatus will be verified through:

Third-party verification of anticipated purchase costs of auxiliary apparatus

If third-party is not possible, billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months

If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, OHA 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. OHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

**Family Member(s) Permitted to Work**

OHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

**OHA Policy**

OHA will seek third-party verification from a Rehabilitation Agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third-party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

**Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

**OHA Policy**

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

#### **7-IV.D. CHILD CARE EXPENSES**

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, OHA 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 in accordance with Alameda County Self Sufficiency Index .

#### **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. OHA 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.

#### **OHA Policy**

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

### **Pursuing an Eligible Activity**

OHA 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.

#### **OHA Policy**

##### *Information to be Gathered*

OHA 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 OHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases OHA will request verification from the agency of the member's job seeking efforts to date and require the family to submit to OHA any reports provided to the other agency.

In the event third-party verification is not available, OHA will provide the family with a form on which the family member must record job search efforts. OHA will review this information at each subsequent reexamination for which this deduction is claimed.

##### *Furthering Education*

OHA will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

##### *Gainful Employment*

OHA will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

### **Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

#### **OHA Policy**

OHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

OHA 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).

OHA 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.

#### **OHA Policy**

The actual costs the family incurs will be compared with OHA's established standards, which is the Alameda County expense limits 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, OHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

**Exhibit 7-1:**

<b>Upfront (UIV)</b>	<b>Highest (Highly Recommended, highest level of third party verification)</b>
<b>Written 3<sup>rd</sup> Party</b>	<b>High (Mandatory if upfront income verification is not available or if UIV data differs substantially from tenant-reported information)</b>
<b>Oral 3<sup>rd</sup> Party</b>	<b>Medium (Mandatory if written third party verification is not available)</b>
<b>Document Review</b>	<b>Medium-Low (Use on provisional basis)</b>
<b>Tenant Declaration</b>	<b>Low (Use as a last resort)</b>

<b>Income Type</b>	<b><u>Upfront</u></b>	<b>Written Third Party</b>	<b>Oral Third Party</b>	<b>Document Review</b>	<b>Tenant Declaration</b>
	<b>(LEVEL 5)</b>	<b>(LEVEL 4)</b>	<b>(LEVEL 3)</b>	<b>(LEVEL 2)</b>	<b>(LEVEL 1)</b>
Wages/Salaries	Use of computer matching agreements with a State Wage Information Collection Agency (SWICA) to obtain wage information electronically, by mail, fax or in person.	The HA mails, faxes or e-mails a verification form directly to the independent sources to obtain wage information.	In the event the independent source does not respond to the OHA's written request for information, the HA may contact the independent source by phone or make an in person visit to obtain the requested information.	When neither form of third-party verification can be obtained, the HA may accept original documents such as consecutive pay stubs (HUD recommends the HA review at least three months of pay stubs, if employed by the same employer for three months or more), W-2 forms, etc. from the tenant. The HA documents in the tenant file, the reason third-party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from earnings. The HA documents in the tenant file, the reason third-party verification was not available.
	Agreements with private vendors, agencies, such as The Work Number or ChoicePoint to obtain wage and salary information.	The HA may have the tenant sign a Request for Earnings Statement from the SSA to confirm past earnings. The HA mails the form to SSA and the statement will be sent to the address the HA specifies on the form.			

<b>Income Type</b>	<b><u>Upfront</u></b>	<b>Written Third Party</b>	<b>Oral Third Party</b>	<b>Document Review</b>	<b>Tenant Declaration</b>
	<b>(LEVEL 5)</b>	<b>(LEVEL 4)</b>	<b>(LEVEL 3)</b>	<b>(LEVEL 2)</b>	<b>(LEVEL 1)</b>

Self-Employment	Not available	The HA mails or faxes a verification form directly to sources identified by the family to obtain income information.	The HA may call the source to obtain income information.	The HA may accept any documents (i.e. tax returns, invoices and letters from customers) provided by the tenant to verify self-employment income. The HA documents in the tenant file, the reason third-party verification was not obtained.	The HA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from self-employment. The HA documents in the tenant file, the reason third party verification was not available.
Social Security Benefits	Use of HUD Tenant Assessment SubSystem (TASS) to obtain current benefit history and discrepancy reports.	The HA mails or faxes a verification form directly to the local SSA office to obtain social security benefit information.	The HA may call SSA, with the tenant on the line, to obtain current benefit amount.	The HA may accept an original SSA Notice from the tenant. The HA documents in the tenant file, the reason third party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares monthly social security benefits. The HA documents the tenant file, the reason third party verification was not available.
Benefits	Use of computer matching agreements with the local Social Services Agency to obtain current benefit amount electronically, by mail, fax or in person.	The HA mails or faxes or e-mails a verification form directly to the local Social Services Agency to obtain welfare benefit information.	The HA may call the local Social Services Agency to obtain current benefit amount.	The HA may review an original award notice or printout from the local Social Services Agency provided by the tenant. The HA documents in the tenant file, the reason third party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares monthly welfare benefits. The HA documents in the tenant file, the reason third party verification was not available.

Income Type	<u>Upfront</u>	Written Third Party	<u>Oral Third Party</u>	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)

Child Support	Use of agreement with the local Child Support Enforcement Agency to obtain current child support amount and payment status electronically, by mail or fax or in person.	The HA mails, faxes or e-mails a verification form directly to the local Child Support Enforcement Agency or child support payer to obtain child support amount and payment status .	The HA may call the local Child Support Enforcement Agency of child support payer to obtain current child support amount and payment status.	The HA may review an original court order, notice or printout from the local Child Support Enforcement Agency provided by the tenant to verify current child support amount and payment status. The HA documents in the tenant file, the reason third party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares current child support amount and payment status. The HA documents in the tenant file, the reason third party verification was not available.
Unemployment Benefits	Use of computer matching agreements with a State Wage Information Collection Agency to obtain unemployment compensation electronically, by mail or fax or in person.	The HA mails, faxes or e-mails a verification form directly to the State Wage Information Collection Agency to obtain unemployment compensation information.	The HA may call the State Wage Information Collection Agency to obtain current benefit amount.	The HA may review an original benefit notice or unemployment check stub, or printout from the local State Wage Information Collection Agency provided by the tenant. The HA documents in the tenant file, the reason third party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares unemployment benefits. The HA documents in the tenant file, the reason third party verification was not available.
	Use of HUD systems, when available.				
Pensions	Use of computer matching agreements with a Federal, State, or Local Government Agency to obtain pension information electronically, by mail or fax or in person.	The HA mails, faxes or e-mails a verification form directly to the pension provider to obtain pension information.	The HA may call the pension provider to obtain current benefit amount.	The HA reviews an original benefit notice from the pension provider provided by the tenant. Note: The HA staff must document provided by the tenant. Note: The HA must document the tenant file, the reason third-party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares monthly pension benefits. : The HA documents the tenant file, the reason third party verification was not available.

<b>Upfront (UIV)</b>	<b>Highest (Highly Recommended, highest level of third party verification)</b>
<b>Written 3<sup>rd</sup> Party</b>	<b>High (Mandatory if upfront income verification is not available or if UIV data differs substantially from tenant-reported information)</b>
<b>Oral 3<sup>rd</sup> Party</b>	<b>Medium (Mandatory if written third party verification is not available)</b>
<b>Document Review</b>	<b>Medium-Low (Use on provisional basis)</b>
<b>Tenant Declaration</b>	<b>Low (Use as a last resort)</b>

Income Type	<u>Upfront</u>	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	<b>(LEVEL 5)</b>	<b>(LEVEL 4)</b>	<b>(LEVEL 3)</b>	<b>(LEVEL 2)</b>	<b>(LEVEL 1)</b>

Assets	Use of cooperative agreements with sources to obtain asset and asset income information electronically, by mail or fax or in person.	The HA mails faxes or e-mails a verification form directly to the source to obtain asset and asset income information.	The HA may call the source to obtain asset and asset income information.	The HA may review original documents by the tenant. Note: The HA must document provided by the tenant. The HA documents the tenant file, the reason third- party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declare assets and asset income. The HA documents the tenant file, the reason third-party verification was not available.
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**Exhibit 7-2: Summary of Documentation Requirements for No citizens  
[HCV GB, pp. 5-9 and 5-10)**

<ul style="list-style-type: none"> <li>• All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to OHA.</li> <li>• Except for persons 62 or older, all noncitizens must sign a verification consent form</li> <li>• Additional documents are required based upon the person's status.</li> </ul>	
<p><b>Elderly Noncitizens</b></p> <ul style="list-style-type: none"> <li>• A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.</li> </ul>	
<p><b>All other Noncitizens</b></p> <ul style="list-style-type: none"> <li>• Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.</li> </ul>	
<ul style="list-style-type: none"> <li>• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li> <li>• Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> <li>• “Admitted as a Refugee Pursuant to Section 207”</li> <li>• “Section 208” or “Asylum”</li> <li>• “Section 243(h)” or “Deportation stayed by Attorney General”</li> <li>• “Paroled Pursuant to Section 221 (d)(5) of the USCIS”</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Form I-94 Arrival-Departure Record with no annotation accompanied by: <ul style="list-style-type: none"> <li>• A final court decision granting asylum (but only if no appeal is taken);</li> <li>• A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);</li> <li>• A court decision granting withholding of deportation; or</li> <li>• A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li> </ul>	<ul style="list-style-type: none"> <li>• Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.</li> </ul>
<ul style="list-style-type: none"> <li>• A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or</li> <li>• Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i></li> </ul>	

## Chapter 8

### LEASING AND INSPECTIONS

[24 CFR 5, Subpart G; 24 CFR 966, Subpart A]

#### INTRODUCTION

Public housing leases are the basis of the legal relationship between OHA and the tenant. All units must be occupied pursuant to a dwelling lease agreement that complies with HUD's regulations.

HUD rules also require OHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, OHA may require additional inspections in accordance with OHA policy.

This chapter is divided into two parts as follows:

Part I: Leasing. This part describes pre-leasing activities and OHA's policies pertaining to lease execution, modification, and payments under the lease.

Part II: Inspections. This part describes OHA'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 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,

Part I of this chapter contains regulatory information, when applicable, as well as OHA's policies governing leasing issues.

## **8-I.B. OCCUPANCY AND LEASE ORIENTATION**

### **OHA Policy**

After unit acceptance but prior to occupancy, a OHA representative will provide a lease orientation to the family. The head of household or spouse is required to attend.

### **Orientation Agenda**

#### **OHA Policy**

When families attend the lease orientation, they will be provided with:

- A copy of the lease and addenda
- A copy of OHA's grievance procedure
- A copy of the house rules
- A copy of OHA's schedule of maintenance charges
- A copy of the pamphlet *Protect Your Family From Lead in Your Home*
- A copy of *Things You Should Know* (HUD-1140-OIG)

Topics to be discussed will include:

- Applicable deposits and other charges
- Review and explanation of lease provisions
- Unit maintenance and work orders
- The OHA's reporting requirements
- Explanation of occupancy forms
- Community service requirements
- Family choice of rent

### **8-I.C. EXECUTION OF LEASE**

The lease must be executed by the tenant and OHA, 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 OHA unit to another.

The lease must state the composition of the household as approved by OHA (family members and any OHA-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.

#### **OHA Policy**

The head of household, spouse or cohead, 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 OHA 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 OHA 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 OHA [24 CFR 966.4(a)(3)].

### **Modifications to the Lease Form**

The OHA may modify its lease from time to time. However, OHA must give residents 30 days advance notice of the proposed changes and an opportunity to comment on the changes. OHA 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(1)(2)(iii)(E)].

#### OHA 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 each OHA office location and must be furnished to applicants and tenants on request [24 CFR 966.5].

#### OHA Policy

When OHA proposes to modify or revise schedules of special charges or rules and regulations, OHA will post a copy of the notice in the central office, and will mail a copy of the notice to each resident family. OHA will maintain proper documentation of the notice for maintenance charges.

## **Other Modifications**

### **OHA 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 OHA will be required to initial and date the change.

If a new household member is approved by OHA to reside in the unit, the person's name and birth date will be added to the lease. The head of household and OHA 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 OHA, the lease may require security deposits. The amount of the security deposit cannot exceed \$250 or the equivalent of two months gross rent. OHA 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, or used for tenant services or activities.

#### **OHA Policy**

Residents must pay a security deposit to OHA at the time of admission. The amount of the security deposit will be equal to the family's total tenant payment at the time of move-in, and must be paid in full prior to occupancy.

The OHA will hold the security deposit for the period the family occupies the unit. The OHA will not use the security deposit for rent or other charges while the resident is living in the unit.

Under California law, within 21 calendar days after you move, your landlord must either:

- Send a full refund of your security deposit, or
- Mail or personally deliver an itemized statement that lists the amounts of any deductions from your security deposit and the reasons for the deductions, together with a refund of any amounts not deducted.

If the resident transfers to another unit, OHA will transfer the security deposit to the new unit. The tenant will be billed for any maintenance or other charges due for the "old" unit.

## **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 OHA 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 OHA must give written notice stating any change in the amount of tenant rent and when the change is effective.

#### **OHA Policy**

The tenant rent is due and payable at OHA-designated location on the first of every month.

If a family's tenant rent changes, OHA 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 OHA, the lease may provide for payment of penalties when the family is late in paying tenant rent [24 CFR 966.4(b)(3)].

### **OHA Policy**

If the family fails to pay their rent by the fifth day of the month, and OHA 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.

OHA will charge \$10.00 for late rent payments..

When a check is returned for insufficient funds or is written on a closed account, the rent will be considered unpaid and a returned check fee of \$10.00 will be charged to the family.

## **Maintenance and Damage Charges**

If OHA charges the tenant for maintenance and repair beyond normal wear and tear, the lease must state the basis for the determination of such charges [24 CFR 966.4(b)(2)].

Schedules of special charges for services and repairs which are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for maintenance and repair beyond normal wear and tear are not due and collectible until two weeks after OHA 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 OHA grievance procedures. OHA 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)].

### **OHA Policy**

When applicable, families will be charged for maintenance and/or damages according to OHA'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 30 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the OHA 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 may be grounds for eviction.

## **PART II: INSPECTIONS**

### **8-II.A. OVERVIEW**

HUD rules require OHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, OHA may require additional inspections, in accordance with OHA Policy. This part contains OHA's policies governing inspections, notification of unit entry, and inspection results.

### **8-II.B. TYPES OF INSPECTIONS**

#### **Move-In Inspections [24 CFR 966.4(i)] Look section 8.1**

The lease must require OHA 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 OHA and the resident, must be provided to the tenant and be kept in the resident file.

#### **OHA Policy**

Any adult family member who will be on the lease may attend the initial inspection and sign the inspection form for the head of household.

#### **Move-Out Inspections [24 CFR 966.4(i)]**

The OHA 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 OHA. OHA 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.

#### **OHA Policy**

When applicable, OHA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within 21 days of conducting the move-out inspection.

#### **Annual Inspections**

OHA is required to inspect all occupied units at least annually using HUD's Uniform Physical Condition Standards (UPCS) [24 CFR 902.43(a)(4)].

## **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

### **OHA Policy**

Supervisory quality control inspections will be conducted in accordance with OHA's maintenance plan.

## **Special Inspections**

### **OHA's Policy**

OHA 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**

### **OHA Policy**

Building exteriors, grounds, common areas and systems will be inspected according to OHA's maintenance plan.

## **8-II.C. NOTICE AND SCHEDULING OF INSPECTIONS**

### **Notice of Entry**

#### ***Non-emergency Entries [24 CFR 966.4(j)(1)]***

The OHA 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 OHA entry delivered to the dwelling unit at least two days before such entry is considered reasonable advance notification.

#### **OHA Policy**

OHA will notify the resident in writing at least 24 hours prior to any non-emergency inspection.

For regular annual inspections, the family will receive at least 2 weeks written notice of the inspection to allow the family to prepare the unit for the inspection.

Entry for repairs requested by the family will not require prior notice. Resident-requested repairs presume permission for OHA to enter the unit.

#### ***Emergency Entries [24 CFR 966.4(j)(2)]***

The OHA 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, OHA must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

### **Scheduling of Inspections**

#### **OHA Policy**

Inspections will be conducted during business hours. If a family needs to reschedule an inspection, they must notify OHA at least 24 hours prior to the scheduled inspection.

OHA will reschedule the inspection no more than once unless the resident has a verifiable good cause to delay the inspection. OHA may request verification of such cause.

### **Attendance at Inspections**

A responsible adult is required to be present for move-in inspections [24 CFR 966.4(i)]. There is no such requirement for other types of inspections.

#### **OHA Policy**

Except at move-in inspections, the resident is not required to be present for the inspection. The resident may attend the inspection if he or she wishes.

If no one is at home, the inspector will enter the unit, conduct the inspection and leave a copy of the inspection report in the unit.

OHA will not enter the unit when there are unsupervised minor children present.

## **8-II.D. INSPECTION RESULTS**

The OHA 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 OHA of the damage, and OHA must make repairs within a reasonable time frame.

If the damage was caused by a household member or guest, OHA must charge the family for the reasonable cost of repairs. OHA may also take lease enforcement action against the family.

If OHA cannot make repairs quickly, OHA must offer the family standard alternative accommodations. If OHA 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.

### **OHA Policy**

If OHA cannot make repairs quickly, OHA must offer the family standard alternative accommodations. If OHA 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

When conditions in the unit are hazardous to life, health, or safety, OHA will make repairs or otherwise abate the situation within 24 hours.

Defects hazardous to life, health or safety include, but are not limited to, the following:

- Any condition that jeopardizes the security of the unit

- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling

- Natural or LP gas or fuel oil leaks

- Any electrical problem or condition that could result in shock or fire

- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit

- Utilities not in service, including no running hot water

- Conditions that present the imminent possibility of injury

- Obstacles that prevent safe entrance or exit from the unit

- Absence of a functioning toilet in the unit

- Inoperable smoke detectors

## **Non-emergency Repairs**

### **OHA Policy**

OHA will correct non-life threatening health and safety defects within 15 business days of the inspection date. If OHA is unable to make repairs within that period due to circumstances beyond OHA's control (e.g. required parts or services are not available, weather conditions, etc.) the OHA will notify the family of an estimated date of completion.

The family must allow OHA access to the unit to make repairs.

## **Resident-Caused Damages**

### **OHA 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***

### **OHA Policy**

Residents whose housekeeping habits pose a non-emergency health or safety risk, encourage insect or rodent infestation, mold and mildew or cause damage to the unit are in violation of the lease. In these instances, OHA 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 purposely disengage the unit's smoke detector and the resident will be assessed a maintenance charge for labor and materials associated with the smoke detector replacement. Only one warning will be given. A second incidence may result in lease termination.

## Chapter 9

### REEXAMINATIONS

[24 CFR 960.257, 960.259, 966.4]

#### INTRODUCTION

is required to monitor each family's income and composition over time, and to adjust the family's rent accordingly. OHA 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 OHA must reexamine income for a family depends on whether the family pays income-based or flat rent. HUD requires OHA to offer all families the choice of paying income-based rent or flat rent at least annually. OHA'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. This part discusses the requirements for annual reexamination of income and family composition and related exceptions. Full reexaminations are conducted at least once a year for families paying income-based rents. Except for those one or two person families that are elderly or disabled with fixed incomes, OHA will reexamine income every three years.

Part II: Reexaminations for Families Paying Flat Rents. This part contains OHA'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 OHA's policies for conducting annual updates of family composition for flat rent families.

Part III: Interim Reexaminations. This part includes HUD requirements and OHA 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, OHA 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.

For elderly or disabled families on a fixed income and that have opted for reexaminations every three years, recalculation of family rent will result from the application of a cost of living factor. (Proposed MTW Change)

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]**

### **9-I.A. OVERVIEW**

For those families who choose to pay income-based rent, OHA must conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a)(1)]. For families who choose flat rents, OHA 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, OHA 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.

OHA is required to obtain information needed to conduct reexaminations. How that information will be collected is left to the discretion of OHA. 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 OHA's policies for conducting annual reexaminations.

### **9-I.B. SCHEDULING ANNUAL REEXAMINATIONS AND EXCEPTIONS FOR FAMILIES ON FIXED INCOME**

OHA 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)].

#### **OHA Policy**

Generally, OHA will schedule annual reexaminations to coincide with the family's anniversary date. OHA 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, OHA will perform a new annual reexamination, and the anniversary date will be changed.

OHA may also schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

For elderly or disabled families on a fixed income and that have opted for reexaminations every three years, recalculation of family rent will result from the application of a cost of living factor. (Proposed MTW Change)

**Notification of and Participation in the Annual or Tri-annual Reexamination Process**  
OHA is required to obtain information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of OHA.

OHA Policy

Families generally are required to participate in an annual or tri-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 OHA to request a reasonable accommodation. 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. OHA staff will note whether the family requires translation services and will arrange for such services to be provided, upon family request.

If the family is unable to attend a scheduled interview, the family should contact OHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend the scheduled interview OHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without OHA 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.

### **9-I.C. CONDUCTING ANNUAL REEXAMINATIONS**

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c)(2)].

#### **OHA 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 OHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

**Change in Unit Size**

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. OHA 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.

**OHA Policy**

Each household member age 18 and over will be required to execute a consent form for a criminal background check as part of the annual reexamination process.

**Compliance with Community Service**

For families who include nonexempt individuals, OHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)]. See Chapter 11 for OHA's policies governing compliance with the community service requirement.

### **9-I.D. EFFECTIVE DATES**

As part of the annual reexamination process, OHA must make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a)(1)].

#### **OHA 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 OHA 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 OHA, 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 OHA 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 OHA.

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 OHA by the date specified, and this delay prevents OHA from completing the reexamination as scheduled.

**PART II: REEXAMINATIONS FOR FAMILIES PAYING FLAT RENTS**  
**[24 CFR 960.257(2)]**

**9-II.A. OVERVIEW**

HUD requires that OHA offer all families the choice of paying income-based rent or flat rent at least annually. OHA's policies for offering families a choice of rents are located in Chapter 6. For families who choose flat rents, OHA 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)]. OHA is only required to provide the amount of income-based rent the family might pay in those years that OHA 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, OHA must also review community service compliance and should have each adult resident consent to a criminal background check.

This part contains OHA's policies for conducting reexaminations of families who choose to pay flat rents.

**9-II.B. FULL REEXAMINATION OF FAMILY INCOME AND COMPOSITION**

**Frequency of Reexamination**

**OHA Policy**

For families paying flat rents, OHA will conduct a full reexamination of family income once every 3 years.

**Reexamination Policies**

**OHA Policy**

In conducting full reexaminations for families paying flat rents, OHA will follow the policies used for the annual reexamination of families paying income-based rent as set forth in Sections 9-I.B through 9-I.D above.

### **9-II.C. REEXAMINATION OF FAMILY COMPOSITION (“ANNUAL UPDATE”)**

As noted above, full reexaminations are conducted every 3 years for families paying flat rents. In the years between full reexaminations, regulations require OHA 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 OHA does not collect information about the family’s income and expenses, and the family’s rent is not recalculated following an annual update.

#### **Scheduling Families on Flat Rent**

OHA 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)].

##### **OHA 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, OHA 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 for Families on Flat Rent**

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)].

##### **OHA Policy**

Generally, the family will not be required to attend an interview for an annual update.

However, if OHA 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 OHA. The family will have 10 business days to submit the required information to OHA. If the family is unable to obtain the information or documents within the required time frame, the family may request an extension. OHA 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, OHA 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 OHA.

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 for families on Flat Rent***

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. OHA 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 for families on Flat Rent***

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.

**OHA 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 on Flat Rent***

For families who include nonexempt individuals, OHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)].

See Chapter 11 for OHA's policies governing compliance with the community service requirement.

## **PART III: INTERIM REEXAMINATIONS [24 CFR 960.257; 24 CFR 966.4]**

### **9-III.A. OVERVIEW**

Family circumstances may change throughout the period between annual reexaminations. HUD and OHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances OHA must process interim reexaminations to reflect those changes. HUD regulations also permit OHA 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. OHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and OHA policies describing what changes families are required to report, what changes families may choose to report, and how OHA will process both OHA- and family-initiated interim reexaminations.

### **9-III.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

OHA 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, OHA 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.

#### **OHA 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).

OHA 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 OHA approval. However, the family is required to promptly notify OHA of the addition [24 CFR 966.4(a)(1)(v)].

#### **OHA Policy**

The family must inform OHA of the birth, adoption or court-awarded custody of a child within 10 business days.

### **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request OHA's 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)].

OHA may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which OHA consent will be given or denied. Under such policies, the factors considered by OHA 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.
- OHA's obligation to make reasonable accommodation for persons with disabilities.

#### **OHA Policy**

Families must request OHA 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 OHA prior to the individual moving into the unit.

OHA will not approve the addition of a new family or household member unless the individual meets OHA's eligibility criteria (see Chapter 3).

If OHA determines that an individual does not meet OHA's eligibility criteria as defined in Chapter 3, OHA 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.

OHA 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**

#### **OHA Policy**

If a family member ceases to reside in the unit, the family must inform OHA 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 OHA within 10 business days.

### **9-III.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because OHA 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, OHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

#### **OHA 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.

#### **OHA-initiated Interim Reexaminations**

OHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by OHA. They are not scheduled because of changes reported by the family.

#### **OHA Policy**

OHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), OHA 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 OHase-in period).

If the family has reported zero income, OHA will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.

If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), OHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the annual reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, OHA will conduct an interim reexamination.

OHA 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**

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***

##### **OHA Policy**

Families are required to report all increases in earned income, including new employment, within 10 business days of the date the change takes effect.

OHA will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's rent will change as a result of the increase. In all other cases, OHA will note the information in the tenant file, but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.

#### ***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)]. OHA will 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.

##### **OHA Policy**

If a family reports a change that it was not required to report and that would result in an increase in the tenant rent, OHA will note the information in the tenant file, but will not conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in a decrease in the tenant rent, OHA will conduct an interim reexamination. See Section 9-III.D. for effective dates.

Families may report changes in income or expenses at any time.

## **9-III.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

#### **OHA Policy**

The family may notify OHA of changes in writing. If the family provides oral notice, OHA requires the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if OHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, OHA 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 OHA. This time frame may be extended for good cause with OHA approval. OHA will accept required documentation by mail, by fax, or in person.

### **Effective Dates**

OHA must make the interim reexamination within a reasonable time after the family request [24 CFR 960.257(b)].

#### **OHA Policy**

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

## **PART IV: RECALCULATING TENANT RENT**

### **9-IV.A. OVERVIEW**

For those families paying income-based rent, OHA 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. For elderly or disabled families on a fixed income and that have opted for reexaminations every three years, recalculation of family rent may result from the application of a cost of living factor

### **9-IV.B. CHANGES IN UTILITY ALLOWANCES [24 CFR 965.507, 24 CFR 966.4]**

The tenant rent calculations must reflect any changes in OHA's utility allowance schedule [24 CFR 960.253(c)(3)]. Chapter 16 discusses how utility allowance schedules are established.

#### **OHA Policy**

Unless OHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

### **9-IV.C. NOTIFICATION OF NEW TENANT RENT**

The public housing lease requires OHA 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 OHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of OHA's schedule of Utility Allowances for families in OHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, OHA must notify the tenant that the tenant may ask for an explanation stating the specific grounds of OHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under OHA's grievance procedure [24 CFR 966.4(c)(4)].

#### **OHA Policy**

The notice to the family will include the annual and adjusted income amounts that were used to calculate the tenant rent.

#### **9-IV.D. DISCREPANCIES**

During an annual or interim reexamination, OHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, OHA may discover errors made by OHA. When errors resulting in the overpayment or underpayment of rent are discovered, corrections will be made in accordance with the policies in Chapter 15.

## Chapter 10

### PETS

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

#### INTRODUCTION

This chapter explains OHA'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 OHA 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 OHA.

The chapter is organized as follows:

Part I: Assistance Animals. This part explains the difference between assistance animals and pets and contains policies related to the designation of an assistance animal as well as their care and handling.

Part II: Pet policies for all developments. This part includes pet policies that are common to both elderly developments and general occupancy developments.

## **PART I: ASSISTANCE ANIMALS**

[Section 504; Fair Housing Act (42 U.S.C.); 24 CFR 5.303]

### **10-I.A. OVERVIEW**

This part discusses situations under which permission for an assistance animal may be denied, and also establishes standards for the care of assistance animals.

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or that provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals – often referred to as “service animals,” “assistive animals,” “support animals,” or “therapy animals” – perform many disability-related functions, including but not limited to the following:

- Guiding individuals who are blind or have low vision
- Alerting individuals who are deaf or hearing impaired
- Providing minimal protection or rescue assistance
- Pulling a wheelchair
- Fetching items
- Alerting persons to impending seizures
- Providing emotional support to persons with disabilities who have a disability-related need for such support

Assistance animals that are needed as a reasonable accommodation for persons with disabilities are not considered pets, and thus, are not subject to OHA’s pet policies described in Parts II through IV of this chapter [24 CFR 5.303; 960.705].

Assistive animals are allowed in all public housing families with no restriction other than those imposed on all tenants to maintain their units and associated facilities in a decent, safe and sanitary manner and to refrain from disturbing their neighbors.

## **10-I.B. APPROVAL OF ASSISTANCE ANIMALS**

A person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person's disability and his or her need for the animal [PH Occ GB, p. 179].

OHA 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].

OHA'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

OHA have the authority to regulate assistance animals under applicable federal, state, and local law [24 CFR 5.303(b)(3); 960.705(b)(3)].

### OHA Policy

For an animal to be excluded from the pet policy and be considered an assistance animal, there must be a person with disabilities in the household, and the family must request and OHA approve a reasonable accommodation in accordance with the policies contained in Chapter 2.

## **10-I.C. CARE AND HANDLING**

HUD regulations do not affect any authority OHA may have to regulate assistance animals under federal, state, and local law [24 CFR 5.303; 24 CFR 960.705].

### OHA 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, OHA will consider whether the violation could be reduced or eliminated by a reasonable accommodation. If OHA determines that no such accommodation can be made, OHA may withdraw the approval of a particular assistance animal.

## **PART II: PET POLICIES FOR ALL DEVELOPMENTS**

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

### **10-II.A. OVERVIEW**

The purpose of a pet policy is to establish clear guidelines for ownership of pets and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. It also establishes reasonable rules governing the keeping of common household pets. This part contains pet policies that apply to all developments.

### **10-II.B. MANAGEMENT APPROVAL OF PETS**

#### **Registration of Pets**

OHA requires registration of the pet with OHA [24 CFR 960.707(b)(5)].

#### OHA Policy

Pets must be registered with OHA before they are brought onto the premises.

Registration includes documentation signed by a licensed veterinarian or state/local authority that the pet has received all inoculations required by state or local law, and that the pet has no communicable disease(s) and is pest-free. The pet agreement must be renewed annually and will be coordinated with the annual reexamination date.

Pets will not be approved to reside in a unit until completion of the registration requirements.

## **Refusal to Register Pets**

### OHA Policy

OHA will refuse to register a pet if:

The pet is not *a common household pet* as defined in Section 10-II.C. below

Keeping the pet would violate any pet restrictions listed in this policy

The pet owner fails to provide complete pet registration information, or fails to update the registration annually

The applicant has previously been charged with animal cruelty under state or local law; or has been evicted, had to relinquish a pet or been prohibited from future pet ownership due to pet rule violations or a court order

OHA reasonably determines that the pet owner is unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament and behavior may be considered as a factor in determining the pet owner's ability to comply with provisions of the lease.

If OHA refuses to register a pet, a written notification will be sent to the pet owner within 10 business days of OHA'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 OHA's grievance procedures.

## **Pet Agreement**

### OHA Policy

Residents who have been approved to have a pet must enter into a pet agreement with OHA, 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 OHA'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 OHA's pet policy and applicable house rules may result in the withdrawal of OHA approval of the pet or termination of tenancy.

## **10-II.C. STANDARDS FOR PETS [24 CFR 5.318; 960.707(b)] Guidelines**

OHA may establish reasonable requirements related to pet ownership including, but not limited to:

- Limitations on the number of animals in a unit.
- Prohibitions on types of animals that OHA 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

OHA 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 OHA to define the term [24 CFR 5.306(2)].

#### OHA Policy

*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.

The following animals are not considered common household pets:

Reptiles

Rodents

Insects

Arachnids

Wild animals or feral animals

Pot-bellied pigs

Animals used for commercial breeding

Barn yard animals.

## **Number of Pets 13.4 Page 63**

### OHA Policy

Residents may own a maximum of 2 pets, only 1 of which may be a dog.

In the case of fish, residents may keep no more than can be maintained in a safe and healthy manner in a tank holding up to 10 gallons. Such a tank or aquarium will be counted as 1 pet.

## **Pet Restrictions Place Guidelines in here Page 13.4 Dog/Cats**

### OHA Policy

The following animals are not permitted:

Any animal whose adult weight will exceed 25 pounds

Ferrets or other animals whose natural protective mechanisms pose a risk to small children of serious bites or lacerations

Any animal not permitted under state or local law or code

## **Other Requirements**

### OHA Policy

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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 OWNERSHIP RULES**

Pet owners must maintain pets responsibly, in accordance with OHA 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**

#### OHA 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]**

OHA 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.

OHA may direct initial tenant moves as may be necessary to establish pet and no-pet areas. OHA 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. OHA 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.

OHA may not designate an entire development as a no-pet area, since regulations permit residents to own pets.

#### OHA Policy

With the exception of common areas as described in the previous policy, OHA has not designated any buildings, floors of buildings, or sections of buildings as no-pet areas. In addition, OHA has not designated any buildings, floors of buildings, or sections of buildings for residency of pet-owning tenants.

## **Cleanliness**

### OHA 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 a container provided by OHA.

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**

### OHA 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**

### OHA 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**

### OHA 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 OHA property.

No animals may be tethered or chained inside or outside the dwelling unit at any time.

## **Responsible Parties**

### OHA 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 OHA and sign a statement that they agree to abide by all of the pet rules.

## **Pets Temporarily on the Premises**

### OHA Policy

Pets that are not owned by a tenant are not allowed on the premises. 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 OHA.

## **Pet Rule Violations**

### OHA 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 a meeting to discuss the violation

That the pet owner is entitled to be accompanied by another person of his or her choice at the meeting

That the pet owner's failure to correct the violation, request a meeting, or appear at a requested meeting may result in initiation of procedures to remove the pet, or to terminate the pet owner's tenancy

## **Notice for Pet Removal**

### OHA Policy

If the pet owner and OHA are unable to resolve the violation at the meeting or the pet owner fails to correct the violation in the time period allotted by OHA, OHA may serve notice to remove the pet.

The notice will contain:

A brief statement of the factual basis for OHA's determination of the pet rule that has been violated

The requirement that the resident /pet owner must remove the pet within 30 calendar days of the notice

A statement that failure to remove the pet may result in the initiation of termination of tenancy procedures

## **Pet Removal**

### OHA 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 OHA after reasonable efforts cannot contact the responsible party, OHA may contact the appropriate state or local agency and request the removal of the pet.

## **Termination of Tenancy**

### OHA Policy

OHA 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**

### OHA Policy

OHA 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 OHA 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**

### **10-III.A. OVERVIEW**

This part describes OHA'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**

OHA 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 amount of pet deposit that may be charged by OHA is \$250 Per dwelling unit. OHA 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)].

#### OHA Policy

Pet owners are required to pay a pet deposit in addition to any other required deposits..

#### **Refund of Deposit [24 CFR 5.318(d)(1)]**

OHA may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet deposit,. OHA 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.

#### OHA Policy

OHA will refund the pet deposit to the resident, less the costs of any damages caused by the pet to the dwelling unit, within 30 days of move-out or removal of the pet from the unit.

The resident will be billed for any amount that exceeds the pet deposit.

OHA will provide the resident with a written list of any charges against the pet deposit within 10 business days of the move-out inspection. If the resident disagrees with the amount charged to the pet deposit, OHA will provide a meeting to discuss the charges.

### **10-III.C. OTHER CHARGES**

#### **Pet-Related Damages During Occupancy**

#### OHA Policy

All reasonable expenses incurred by OHA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

The cost of repairs and replacements to the resident's dwelling unit

Fumigation of the dwelling unit

Repairs to common areas of the project

The expense of flea elimination shall also be the responsibility of the resident.

If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.G, Maintenance and Damage Charges. Pet deposits will not be applied to the costs of pet-related damages during occupancy.

Charges for pet-related damage are not part of rent payable by the resident.

### **Pet Waste Removal Charge**

The regulations do not address OHA's ability to impose charges for house pet rule violations. However, charges for violation of OHA pet rules may be treated like charges for other violations of the lease and OHA tenancy rules.

#### OHA 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, OHA may not take action for nonpayment of the charge until the conclusion of the grievance process.

Charges for pet waste removal are not part of rent payable by the resident.



## Chapter 11

### COMMUNITY SERVICE

#### INTRODUCTION

This chapter explains HUD regulations requiring OHA to implement a community service program for all non-exempt adults living in public housing.

This chapter describes HUD regulations and OHA 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: OHA Implementation of Community Service. This part provides OHA policy regarding OHA 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). OHA and residents must comply with the community service requirement, effective with fiscal years that commenced on or after October 1, 2000. Per 903.7(l)(1)(iii), OHA Plan must contain a statement of the how OHA will comply with the community service requirement, including any cooperative agreement that OHA 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, OHA must comply with all nondiscrimination and equal opportunity requirements [24 CFR 960.605(c)(5)].

## **11-I.B. REQUIREMENTS**

Each adult resident of OHA, who is not exempt, must [24 CFR 960.603(a)]:

- Contribute 8 hours per month of community service; or
- Participate in an economic self-sufficiency program (as defined in the regulations) for 8 hours per month; or
- Perform 8 hours per month of combined activities (community service and economic self-sufficiency programs).

### OHA Policy

An individual may not skip a month and then double up the following month, unless special circumstances warrant it..

Individuals who have special circumstances which they believe will prevent them from completing the required community service hours for any given month, must notify OHA in writing. OHA will review the request and notify the individual, in writing, of its determination within 10 business days. OHA may require those individuals to provide documentation to support their claim.

## **Definitions**

### ***Exempt Individual [24 CFR 960.601(b)]***

An *exempt individual* is an adult who:

- Is age 62 years or older
- Is blind or disabled (as defined under section 216[i][1] or 1614 of the Social Security Act), and who certifies that because of this disability s/he is unable to comply with the service provisions
- Is a primary caretaker of such an individual
- Is engaged in work activities

### OHA Policy

OHA will consider 30 hours per week as the minimum number of hours needed to qualify for a work activity exemption.

- Meets the requirements for being exempted from having to engage in a work activity under the 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 OHA is located, including a state-administered welfare-to-work program; or
- Is in a family receiving assistance 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 OHA 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 [PH Occ GB, p. 174]***

*Community service* is volunteer work which includes, but is not limited to:

- Work at a local institution including but not limited to: school, child care center, hospital, hospice, recreation center, senior center, adult day care center, homeless shelter, indigent feeding program, cooperative food bank, etc.
- Work with a nonprofit organization that serves OHA residents or their children such as: Boy Scouts, Girl Scouts, Boys or Girls Clubs, 4-H programs, PAL, Garden Center, community clean-up programs, beautification programs, other youth or senior organizations
- Work at OHA to help improve physical conditions
- Work at OHA to help with children's programs
- Work at OHA to help with senior programs
- Helping neighborhood groups with special projects
- Working through a resident organization to help other residents with problems, serving as an officer in a resident organization, serving on the resident advisory board
- Caring for the children of other residents so they may volunteer

NOTE: Political activity is excluded for purposes of eligible community service activities.

***Economic Self-Sufficiency Program [24 CFR 5.603(b)]***

For purposes of satisfying the community service requirement, an *economic self-sufficiency program* is defined by HUD as: Any program designed to encourage, assist, train, or facilitate economic independence of assisted families or to provide work for such families.

These economic self-sufficiency programs can include job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeships (formal or informal), or any other program necessary to ready a participant to work (such as substance abuse or mental health treatment).

***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)]**

OHA 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 OHA verification of exempt status. OHA 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.

### **OHA Policy**

OHA will provide the family with a copy of the Community Service Policy found in Exhibit 11-1 of this chapter, at lease-up, lease renewal, 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, OHA will notify the family in writing of the family members who are subject to the community service requirement and the family members who are exempt. If the family includes non-exempt individuals the notice will include a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which they may record the activities they perform and the number of hours contributed. The form will also have a place for a signature by an appropriate official, who will certify to the activities and hours completed.

## **11-I.C. DETERMINATION OF EXEMPTION STATUS AND COMPLIANCE [24 CFR 960.605(c)(3)]**

OHA 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.

### **OHA Policy**

Where the lease term does not coincide with the effective date of the annual reexamination, OHA will change the effective date of the annual reexamination to coincide with the lease term. In making this change, OHA 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)].

### **OHA Policy**

At least 60 days prior to lease renewal, OHA 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 OHA 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, OHA will notify the family of its determination in accordance with the policy in Section 11-I.B., Notification Requirements.

## ***Determination of Compliance***

OHA must review resident family compliance with service requirements annually at least thirty days before the end of the twelve month lease term [24 CFR 960.605(c)(3)]. As part of this review, OHA must verify that any family member that is not exempt from the community service requirement has met his or her service obligation.

### **OHA Policy**

Approximately 60 days prior to the end of the lease term, OHA 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 OHA required documentation form(s).

If the family fails to submit the required documentation within the required timeframe, or OHA 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**

### **OHA Policy**

#### **Exempt to Non-Exempt Status**

If an exempt individual becomes non-exempt during the twelve month lease term, it is the family's responsibility to report this change to OHA within 30 calendar days.

Within 30 calendar days of a family reporting such a change, or OHA determining such a change is necessary, OHA will provide written notice of the effective date of the requirement, a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which the family member may record the activities performed and number of hours contributed.

The effective date of the community service requirement will be the first of the month following 30 day notice.

#### **Non-Exempt to Exempt Status**

If a non-exempt person becomes exempt during the twelve month lease term, it is the family's responsibility to report this change to OHA within 30 calendar days. Any claim of exemption will be verified by OHA 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 OHA determining such a change is necessary, OHA will provide the family written notice that the family member is no longer subject to the community service requirement, if OHA is able to verify the exemption.

The exemption will be effective immediately upon the Authorities issuance of written notice of exempt status.

## **11-I.D. DOCUMENTATION AND VERIFICATION [24 CFR 960.605(c)(4)]**

OHA must retain reasonable documentation of service requirement performance or exemption in participant files.

### **Documentation and Verification of Exemption Status**

#### **OHA 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. OHA will provide a completed copy to the family and will keep a copy in the tenant file.

OHA will verify that an individual is exempt from the community service requirement by following the verification hierarchy and documentation requirements in Chapter 7.

OHA makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with OHA's determination, s/he can dispute the decision through OHA's grievance procedures (see Chapter 14).

### **Documentation and Verification of Compliance**

If qualifying community service activities are administered by an organization other than OHA, a family member who is required to fulfill a service requirement must provide certification to OHA, signed by the organization, that the family member has performed the qualifying activities [24 CFR 960.607].

#### **OHA Policy**

If anyone in the family is subject to the community service requirement, OHA 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 OHA, upon request by OHA.

If OHA has reasonable cause to believe that the certification provided by the family is false or fraudulent, OHA 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, OHA 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 OHA. 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 of Initial Noncompliance [24 CFR 960.607(b)]***

If OHA 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), OHA must notify the tenant of this determination.

The notice to the tenant must briefly describe the noncompliance. The notice must state that OHA 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 OHA to cure the noncompliance, or the family provides written assurance satisfactory to OHA that the tenant or other noncompliant resident no longer resides in the unit.

The notice must also state that the tenant may request a grievance hearing on OHA's determination, in accordance with OHA's grievance procedures, and that the tenant may exercise any available judicial remedy to seek timely redress for OHA's nonrenewal of the lease because of OHA's determination.

### **OHA 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 a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before OHA 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, and include formal removal of the family member from the lease.

If the family does not request a grievance hearing, or does not take either corrective action required by the notice of noncompliance within the required 10 business day timeframe, OHA 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, OHA must terminate tenancy of the entire family, according to OHA's lease, unless the family provides documentation that the noncompliant resident no longer resides in the unit.

### **OHA Policy**

Notices of continued noncompliance will be sent at least 30 days prior to the end of the lease term and *will also serve as the family's termination notice*. The notice will meet the requirements for termination notices described in 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 a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before OHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the noncompliant family member that previously resided with them.

If the family does not request a grievance hearing, or provide such documentation within the required 10 business day timeframe, the family's lease and tenancy will automatically terminate at the end of the current lease term without further notice.

## **PART II: IMPLEMENTATION OF COMMUNITY SERVICE**

### **11-II.A. OVERVIEW**

OHA must develop a policy for administration of the community service and economic self-sufficiency requirements for public housing. It is in OHA'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.

#### **OHA 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].

##### **OHA Policy**

OHA will notify its insurance company if residents will be performing community service at OHA. In addition, OHA 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, OHA will ensure that requests for reasonable accommodation are handled in accordance with the policies in Chapter 2.

#### **OHA Program Design**

OHA 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)].

##### **OHA Policy**

OHA will attempt to provide the broadest choice possible to residents as they choose community service activities.

OHA'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. OHA will work with resident organizations and community organizations to ensure residents have access to a variety of volunteer opportunities. OHA will make every effort to identify volunteer opportunities throughout the community, especially those in proximity to public housing developments. To the greatest extent possible, OHA 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 OHA Plan.

OHA will provide in-house opportunities for volunteer work or self-sufficiency programs when possible.

## **EXHIBIT 11-1: COMMUNITY SERVICE AND SELF-SUFFICIENCY POLICY**

### **A. Background**

The Quality Housing and Work Responsibility Act of 1998 requires that all non-exempt (see definitions) public housing adult residents (18 or older) contribute eight (8) hours per month of community service (volunteer work) or participate in eight (8) hours of training, counseling, classes or other activities that help an individual toward self-sufficiency and economic independence. This is a requirement of the public housing lease.

### **B. Definitions**

**Community Service** – volunteer work which includes, but is not limited to:

- Work at a local institution, including but not limited to: school, child care center, hospital, hospice, recreation center, senior center, adult day care center, homeless shelter, indigent feeding program, cooperative food bank, etc.
- Work with a nonprofit organization such as: Parks and Recreation, United Way, Red Cross, Volunteers of America, Boy Scouts, Girl Scouts, Boys or Girls Clubs, 4-H Program, PAL, Garden Center, community clean-up programs, beautification programs, other counseling, aid, youth or senior organizations
- Work at the housing authority to help with litter control
- Work at the housing authority to help with children's programs
- Work at the housing authority to help with senior programs
- Helping neighborhood groups with special projects
- Working through a resident organization to help other residents with problems
- Serving as an officer in a resident organization
- Serving on the Resident Advisory Board
- Caring for children of other residents so they may volunteer

**NOTE:** Political activity is excluded.

**Self-Sufficiency Activities** – activities that include, but are not limited to:

- Job readiness programs
- Job training programs
- GED classes
- Substance abuse or mental health counseling
- English proficiency or literacy (reading) classes
- Apprenticeships
- Budgeting and credit counseling
- Any kind of class that helps a person toward economic independence
- Student status at any school, college or vocation school

**Exempt Adult** – an adult member of the family who meets any of the following criteria:

- Is 62 years of age or older
- Is blind or a person with disabilities (as defined under section 216[i][I] or 1614 of the Social Security Act), and who certifies that because of this disability he or she is unable to comply with the service provisions, or is the primary caretaker of such an individuals
- Is working at least 30 hours per week
- Meets the requirements for being exempted from having to engage in a work activity under TANF or any other State welfare program including a State-administered welfare-to-work program
- Is a member of a family receiving assistance, benefits or services under TANF or any other State welfare program and has not been found to be in noncompliance with such program

### **C. Requirements of the Program**

1. The eight (8) hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.
2. At least eight (8) hours of activity must be performed each month. An individual may not skip a month and then double up the following month, unless special circumstances warrant special consideration. The housing authority will make the determination of whether to allow or disallow a deviation from the schedule based on a family's written request.
3. Family obligation:
  - At lease execution, all adult members (18 or older) of a public housing resident family must:
    - Sign a certification that they have received and read this policy and understand that if they are not exempt, failure to comply with the community service requirement will result in a nonrenewal of their lease; and
    - Declare if they are exempt. If exempt, they must complete the Exemption Form (Exhibit 11-3) and provide documentation of the exemption.
  - Upon written notice from OHA, non-exempt family members must present complete documentation of activities performed during the applicable lease term. This documentation will include places for signatures of supervisors, instructors, or counselors, certifying to the number of hours contributed.
  - If a family member is found to be noncompliant at the end of the 12-month lease term, he or she, and the head of household, will be required to sign an agreement with the housing authority to make up the deficient hours over the next twelve (12) month period, as a condition of continued occupancy.
4. Change in exempt status:
  - If, during the twelve (12) month lease period, a non-exempt person becomes exempt, it is his or her responsibility to report this to OHA and provide documentation of exempt status.
  - If, during the twelve (12) month lease period, an exempt person becomes non-exempt, it is his or her responsibility to report this to OHA. Upon receipt of this information OHA 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, OHA 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. OHA 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, OHA will verify the exemption status in accordance with its verification policies. OHA will make the final determination as to whether or not a family member is exempt from the community service requirement. Residents may use OHA's grievance procedure if they disagree with OHA's determination.
4. Noncompliance of family member:
  - At least thirty(30) days prior to the end of the 12-month lease term, OHA will begin reviewing the exempt or non-exempt status and compliance of family members;
  - If, at the end of the initial 12-month lease term under which a family member is subject to the community service requirement, OHA finds the family member to be noncompliant, OHA will not renew the lease unless:
    - The head of household and any other noncompliant resident enter into a written agreement with OHA, to make up the deficient hours over the next twelve (12) month period; or
    - The family provides written documentation satisfactory to OHA 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 OHA that the noncompliant family member no longer resides in the unit;
  - The family may use OHA's grievance procedure to dispute the lease termination.

All adult family members must sign and date below, certifying that they have read and received a copy of this Community Service and Self-Sufficiency Policy.

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

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Date

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Resident

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Date

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Resident

\_\_\_\_\_  
Date

**EXHIBIT 11-2: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(I) and Section 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE**

**Social Security Act:**

**216(i)(1):** Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term “disability” means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

**Section 1416 (excerpt):**

SEC. 1614. [42 U.S.C. 1382c] (a)(1) For purposes of this title, the term “aged, blind, or disabled individual” means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or

(ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

**EXHIBIT 11-3: OHA DETERMINATION OF EXEMPTION FOR COMMUNITY SERVICE**

Family: \_\_\_\_\_

Adult family member: \_\_\_\_\_

Date of Review: \_\_\_\_\_

This adult family member meets the requirements for being exempted from OHA's community service requirement for the following reason:

- 62 years of age or older. (*Documentation of age in file*)
- Is a person with disabilities and self-certifies below that he or she is unable to comply with the community service requirement. (*Documentation of HUD definition of disability in file*)

**Tenant certification:** I am a person with disabilities and am unable to comply with the community service requirement.

\_\_\_\_\_  
Signature of Family Member

\_\_\_\_\_  
Date

- Is the primary caretaker of such an individual in the above category. (*Documentation in file*)
- Is working at least 30 hours per week. (*Employment verification in file*)
- Is participating in a welfare-to-work program. (*Documentation in file*).
- Meets the requirements for being exempted from having to engage in a work activity under TANF or any other State welfare program, including a State-administered welfare-to-work program (*Documentation in file*)
- Is a member of a family receiving assistance, benefits or services under TANF or any other State welfare program and has not been found to be in noncompliance with such program. (*Documentation in file*)

\_\_\_\_\_  
Signature of Family Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of OHA Official

\_\_\_\_\_  
Date

## Chapter 12

### TRANSFER POLICY

#### INTRODUCTION

This chapter explains OHA's transfer policy, based on HUD regulations, HUD guidance, and OHA policy decisions.

This chapter describes HUD regulations and OHA 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: OHA Required Transfers. This part describes types of transfers that may be required by OHA, 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.

OHA may require the resident to move from the unit under some circumstances. There are also emergency circumstances under which alternate accommodations for the resident must be provided, that may or may not require a transfer.

The resident may also request a transfer, such as a request for a new unit as a reasonable accommodation.

OHA must have specific policies in place to deal with acceptable transfer requests.

#### PART I: EMERGENCY TRANSFERS

##### 12-I.A. OVERVIEW

HUD categorizes certain actions as emergency transfers [PH Occ GB, p. 147]. The emergency transfer differs from a typical transfer in that it requires immediate action by OHA.

In the case of a genuine emergency, it may be unlikely that OHA will have the time or resources to immediately transfer a resident. Due to the immediate need to vacate the unit, placing the resident on a transfer waiting list would not be appropriate. Under such circumstances, if an appropriate unit is not immediately available, OHA should find alternate accommodations for the resident 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, OHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

### **OHA Policy**

The following is considered an emergency circumstance warranting an immediate transfer of the resident 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.

## **12-I.C. EMERGENCY TRANSFER PROCEDURES**

### **OHA Policy**

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, OHA will provide temporary accommodations to the resident by arranging for temporary lodging. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, OHA will transfer the resident to the first available and appropriate unit after the temporary relocation.

Emergency transfers are mandatory for the resident.

## **12-I.D. COSTS OF EMERGENCY TRANSFER**

### **OHA Policy**

OHA will bear the reasonable costs of temporarily accommodating the resident and of long term transfers, if any, due to emergency conditions.

The reasonable cost of transfers includes the cost of packing, moving, and unloading.

OHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, OHA will collect information from companies in the community that provide these services.

OHA will reimburse the family for eligible out-of-pocket moving expenses up to OHA's established moving allowance.

## ***PART II: OHA REQUIRED TRANSFERS***

### **12-II.A. OVERVIEW**

HUD regulations regarding transfers are minimal, leaving it up to OHA to develop reasonable transfer policies.

OHA may require that a resident transfer to another unit under some circumstances. For example, OHA may require a resident to transfer to make an accessible unit available to a disabled family. OHA may also transfer a resident in order to maintain occupancy standards based on family composition. Finally, OHA may transfer residents in order to demolish or renovate the unit.

A transfer that is required by OHA 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 OHA REQUIRED TRANSFERS**

#### **OHA Policy**

The types of transfers that may be required by OHA, 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 to reasonably accommodate persons with disabilities are not covered in this transfer policy. See [*Insert Section*] for policies on reasonable accommodations.

Transfers required by OHA are mandatory for the resident.

#### **Transfers to Make an Accessible Unit Available**

When a family is initially given an accessible unit, but does not require the accessible features, OHA may require the family to agree to move to a non-accessible unit when it becomes available [24 CFR 8.27(b)].

#### **OHA Policy**

When a non-accessible unit becomes available, OHA will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. OHA 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.

#### **Costs of Transfers to Make an Accessible Unit Available**

OHA will not reimburse the family (that does not need the accessible features) for moving expenses.

## **12-II.C. OCCUPANCY STANDARDS TRANSFERS**

OHA 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 OHA policy [24 CFR 960.257(a)(4)]. On some occasions, OHA 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 resident's agreement to transfer to an appropriately sized unit based on family composition [24 CFR 966.4(c)(3)].

### **OHA Policy**

OHA 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 OHA's occupancy standards as described in Section 5-I.B.

OHA 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 OHA's occupancy standards, when OHA determines there is a need for the transfer.

OHA 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 OHA 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 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.

### **Cost of Occupancy Standard Transfers**

OHA will not reimburse the family for moving expenses.

## **12-II.D. DEMOLITION, DISPOSITION, REVITALIZATIONS, OR REHABILITATION TRANSFERS**

These transfers permit OHA to demolish, sell or do major capital or rehabilitation work at a building site [PH Occ GB, page 148].

### **OHA Policy**

OHA will transfer 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.

If the site is disposed or demolished OHA will relocate families in accordance with its relocation plan.

### **Cost of Transfer**

OHA will bear the reasonable costs of temporarily accommodating the resident and of long term transfers, if any, due to emergency conditions.

The reasonable cost of transfers includes the cost of packing, moving, and unloading.

OHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, OHA will collect information from companies in the community that provide these services.

OHA will reimburse the family for eligible out-of-pocket moving expenses up to OHA's established moving allowance.

**12-II.E. ADVERSE ACTION [24 CFR 966.4(e)(8)(i)]**

OHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests a grievance hearing within the required timeframe, OHA may not take action on the transfer until the conclusion of the grievance process.

## **PART III: TRANSFERS REQUESTED BY RESIDENTS**

### **12-III.A. OVERVIEW**

HUD provides OHA with discretion to consider transfer requests from residents. The only requests that OHA is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of OHA. To avoid administrative costs and burdens, this policy limits the types of requests that will be considered by OHA.

Some transfers that are requested by residents 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**

#### **OHA Policy**

The types of requests for transfers that OHA 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 OHA's occupancy standards, and transfers to a location closer to employment. No other transfer requests will be considered by OHA.

OHA 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 OHA's discretion, include an assessment by law enforcement indicating a threat of criminal attack, potential retaliation for testimony, or where the resident is a victim of a hate crime or domestic violence. For victims of domestic violence, OHA recognizes that the victim's safety is of utmost importance. OHA shall give resource listing on domestic violence to families and as determined appropriate.

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

When the transfer is at the request of the family, the family may be required to provide third party verification of the need for the transfer.

### **12-III.C. ELIGIBILITY FOR TRANSFER**

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, the OHA may establish other standards for considering a transfer request [PH Occ GB, p. 150].

#### OHA Policy

Except where reasonable accommodation is being requested, the OHA 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 resident-paid utilities)

A resident with housekeeping standards violations will not be transferred until the resident passes a follow-up housekeeping inspection.

Exceptions to the good record requirement may be made when it is to the OHA'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, 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**

### OHA Policy

When a family transfers from one unit to another, OHA will transfer their security deposit to the new unit. The resident will be billed for any maintenance or others charges due for the “old” unit.

### **12-III.E. COST OF TRANSFERS**

#### **OHA Policy**

The resident will bear all of the costs of transfer requested by the resident. However, in cases of documented financial hardship, OHA will consider assuming the transfer costs when the transfer is done as a reasonable accommodation.

### **12-III.F. HANDLING OF REQUESTS**

#### **OHA 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, OHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, OHA will consider the transfer request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

OHA will respond by approving the transfer, 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.

OHA will respond within ten (10) business days of the submission of the family’s request. If OHA 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**

The decision as to when a transfer shall take place is at the sole discretion of OHA and considerations such as the number of families on OHA's waiting lists, total number of vacant units, fiscal impact, and OHA ability to continue to serve eligible residents will be evaluated.

The oHA 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:

1. Emergency transfers
2. Verified medical condition
3. Threat of harm or criminal activity
4. Reasonable accommodation
5. Transfer to make an accessible unit available
6. Demolition, renovation, etc.
7. Occupancy Standards
8. Other OHA required transfers
9. Other resident requested transfers

Within each category, transfers will be processed in order of the date the family was placed on the transfer list, starting with the earliest date.

Demolition and renovation transfers will gain the highest priority as necessary to allow the OHA to meet the demolition or renovation schedule.

Transfers will take precedence over waiting list admissions.

### **12-IV.C. TRANSFER OFFER POLICY**

The provisions listed above are to be used as a guide to insure fair and impartial means of assigning units for transfers. It is not intended that this policy will create a property right or any other type of right for a resident to transfer or refuse to transfer.

Residents who are required to be transferred for the following reasons shall be given one offer (not including rejection for acceptable justification as outlined in “A” and “B” above).

- An emergency;
- Transfer to a unit that reasonably accommodates a family member’s disability; and
- Because the family is grossly over-housed or under-housed.

Refusal to accept a transfer by any resident who may be required to move in compliance with occupancy standards contained in Section 4 or because their dwelling unit is not habitable shall be grounds for termination of their lease.

#### **OHA Policy**

Residents will receive one offer of a transfer.

When the transfer is required by OHA, refusal of that offer without good cause will result in lease termination.

When the transfer has been requested by the resident, refusal of that offer without good cause will result in the removal of the household from the transfer list and the family must wait six months to reapply for another transfer.

### **12-IV.D. GOOD CAUSE FOR UNIT REFUSAL**

#### **OHA Policy**

Good cause for refusal of a unit offer includes reasons related to health, proximity to work, school, and childcare (for those working or going to school).

OHA will require documentation of good cause for unit refusals.

#### **12-IV.E. DECONCENTRATION**

##### OHA Policy

If subject to deconcentration requirements, the OHA 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 OHA'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**

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. OHA 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 OHA can terminate a family's lease, and give OHA authority to determine other reasons.

When determining OHA 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 OHA'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 OHA places upon families who wish to terminate their lease.

Part II: Termination by OHA - Mandatory. This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by OHA occurs. This part also includes nonrenewal of the lease for noncompliance with community service requirements.

Part III: Termination by OHA – Other Authorized Reasons. This part describes the OHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes OHA to terminate. For some of these options HUD requires OHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options OHA has full discretion whether to consider the options as just cause to terminate as long as OHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that OHA may consider in lieu of termination, and the criteria OHA 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 OHA 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-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]**

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or sent by pre-paid first-class mail, properly addressed.

#### **OHA Policy**

If a family desires to move and terminate their tenancy, they must give at least 30 calendar days advance written notice to OHA of their intent to vacate. If the tenant vacates prior to the end of the thirty (30) days, they will be responsible for rent through the end of the notice period or until the unit is re-rented, whichever occurs first.

The notice of lease termination must be signed by the head of household, spouse, or co-head or other adult member listed on the lease.

## **PART II: TERMINATION BY OHA – MANDATORY**

### **13-II.A. OVERVIEW**

HUD requires OHA to terminate the lease in certain circumstances. In other circumstances HUD requires OHA to establish provisions for lease termination, but it is still OHA's 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, OHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires OHA to terminate the lease.

### **13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]**

OHA 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)]**

OHA 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 OHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

See Chapter 7 for a complete discussion of documentation requirements.

### **13-II.D. FAILURE TO PROVIDE SOCIAL SECURITY DOCUMENTATION [24 CFR 5.218(c) and 24 CFR 960.259(a)(3)]**

OHA must terminate the lease if a resident family fails to provide the documentation or certification required for any family member who obtains a social security number. See Chapter 7 for a complete discussion of documentation and certification requirements.

**13-II.E. FAILURE TO ACCEPT THE OHA’S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]**

OHA must terminate the lease if the family fails to accept OHA’s offer of a lease revision to an existing lease, provided OHA has done the following:

- The revision is on a form adopted by OHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- OHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- OHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to OHA policies for offering lease revisions.

**13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]**

OHA must immediately terminate the lease if OHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

See Part 13-III.B. below for the HUD definition of *premises*.

**13-II.G. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]**

OHA is prohibited from renewing the lease at the end of the 12-month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

## **PART III: TERMINATION BY OHA – OTHER AUTHORIZED REASONS**

### **13-III.A. OVERVIEW**

Besides requiring OHA to terminate the lease under the circumstances described in Part II, HUD requires OHA 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 OHA to terminate for such violations in all cases. OHA has the discretion to consider circumstances surrounding the violation or in applicable situations. OHA may, as an alternative to termination, require the exclusion of the culpable household member.

In addition, HUD authorizes OHA 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. OHA 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.

In the development of the terms of the lease, OHA 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 OHA wide discretion in some areas, a broad range of policies could be acceptable. OHA, with some restrictions, also has the option to terminate the tenancies of families who are over income.

OHA may consider alternatives to termination and must establish policies describing the criteria OHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps OHA 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..

#### ***Definitions* [24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

*Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

*Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.

*Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

*Household* means the family and OHA-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.

*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.

#### **OHA Policy**

OHA 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.

OHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA 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 OHA may evict a family when OHA 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.

#### **OHA Policy**

OHA will terminate the lease when OHA determines that a household member is illegally using a drug or OHA 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.

OHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA 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 OHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

**OHA Policy**

OHA 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 OHA 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.

OHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate the lease.

**Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]**

OHA will terminate the lease if OHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

OHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA 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)]**

OHA will terminate the lease if it determines that a household member has furnished false or misleading information concerning illegal drug use or alcohol abuse

OHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA 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, and grounds for termination.

**OHA Policy**

OHA 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 OHA 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 elevators

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, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA 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 OHA 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 OHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit OHA to only those examples.

##### **OHA Policy**

OHA 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 OHA 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 OHA that such a dwelling unit is available

Failure to permit access to the unit by OHA 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 OHA 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 OHA pet policy

If the family has breached the terms of a repayment agreement entered into with OHA

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 or threatened violent or abusive behavior toward OHA personnel.

*Abusive or violent behavior towards OHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

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

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors described in Section 13-III.E. Upon consideration of

such alternatives and factors, OHA 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, OHA has 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.

**OHA Policy**

The family must supply any information or certification requested by OHA to verify that the family is living in the unit, or relating to family absence from the unit, including any OHA-requested information or certification on the purposes of family absences. The family must cooperate with OHA for this purpose.

The family must promptly notify OHA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. In such a case promptly means within 10 business days of the start of the extended absence.

If a family is absent from the public housing unit for more than 180 consecutive days, and the family does not adequately verify that they are living in the unit, OHA will terminate the lease for other good cause.

*Abandonment.* If the family appears to have vacated the unit without giving proper notice, OHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit.

OHA will consider a unit to be abandoned when a resident has both fallen behind in rent and has clearly indicated by words or action an intention not to continue living in the unit. If necessary, OHA will secure the unit immediately to prevent vandalism and other criminal activity

When a unit has been abandoned, OHA will comply with Sections 1980 and 1990 of the California Civil Code.

**Over-Income Families [24 CFR 960.261 and FR 11/26/04, p. 68786]**

Subject to certain restrictions, HUD authorizes OHA to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, OHA may not evict or terminate the tenancy of a family solely because the family is over income if: (1) the family has a valid contract of participation in the Family Self-Sufficiency (FSS) program, or (2) the family is currently receiving the earned income disallowance. This rule does not require OHA to evict over-income residents, but rather gives OHA the discretion to do so thereby making units available for applicants who are income-eligible.

**OHA Policy**

OHA will not evict or terminate the tenancies of families solely because they are over income.

**13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY**

**Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]**

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that OHA may consider exclusion of the culpable household member. Such an alternative can be used, by OHA policy, for any other reason where such a solution appears viable.

**OHA Policy**

OHA 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 OHA's request.

**Repayment of Family Debts**

**OHA Policy**

If a family owes amounts to OHA, as a condition of continued occupancy, OHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from OHA of the amount owed. See Chapter 16 for policies on repayment agreements.

### **13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY**

If OHA has grounds to terminate a tenancy it 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 OHA 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.

#### **OHA Policy**

OHA 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 OHA 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.

#### **OHA Policy**

OHA 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 or a person with disabilities

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 OHA's failure to terminate the tenancy

The effect of OHA'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

#### **For-Cause Eviction Guidelines**

The For-Cause Eviction Guidelines are intended for use of OHA's Housing Management staff in the implementation of existing OHA occupancy policies regarding tenant evictions for causes such as drug-related, weapons-related and/or violent criminal activities that threaten the health and safety or right to peaceful enjoyment of the premises by other tenants. These guidelines do not apply to cases that only involve the failure to pay rent or maintenance charges.

The guidelines are consistent with OHA's commitment to make every reasonable effort to promote safer public housing communities and assure that residents are given legitimate opportunities for successful program participation.

The decision whether to initiate proceedings to terminate tenancy in all For-Cause evictions remains a matter of judgment. Staff of OHA will consider all circumstances with each individual case.

The Deputy Executive Director or his/her designee is required to review all For-Cause Evictions

**Reasonable Accommodation [24 CFR 966.7]**

If the family includes a person with disabilities, OHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

**OHA Policy**

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, OHA will determine whether the behavior is related to the disability. If so, upon the family's request, OHA will determine whether alternative measures are appropriate as a reasonable accommodation. OHA 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)]**

OHA's eviction actions are consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

## **PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING**

### **13-IV.A. OVERVIEW**

HUD regulations specify the 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 OHA to conduct criminal records checks on public housing residents for lease enforcement and eviction. OHA policy determines when OHA will conduct such checks.

#### **OHA Policy**

OHA may conduct criminal records checks when it has come to the attention of OHA, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. All criminal record checks will be conducted in conjunction with a current criminal investigation, and information will be provided to staff on a “needs-to-know, right-to-know” basis.

If the records check is not tied to a current investigation, OHA may obtain an individual’s criminal record from the Alameda County Consolidated Criminal Records Office (CCR), 15001 Foothill Blvd, San Leandro, CA, 94578, (510) 667-3190.

In order to obtain such information, all adult household members may be required to sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

OHA will 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 OHA 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 OHA 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, OHA 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.

**OHA Policy**

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, OHA 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, or a summary of such information contained in a police report, as well as an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken. If the household requests a copy of their summary criminal history record to dispute allegations, the household shall be directed to Alameda County Consolidated Criminal Records Office (CCR), 15001 Foothill Blvd, San Leandro, CA, 94578, (510) 667-3190.

The family will be given 10 business days from the date of OHA notice, to dispute the accuracy and relevance of the information. If the family does not contact OHA to dispute the information within that 10 business day period, OHA 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.

OHA does not conduct criminal records OHA 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 OHA notice, to dispute the accuracy and relevance of the information. If the family does not contact OHA to dispute the information within that 10 business day period, OHA 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(i)(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 OHA documents directly relevant to the termination or eviction. If OHA does not make the documents available for examination upon request by the tenant, OHA may not proceed with the eviction [24 CFR 966.4(m)].

When OHA 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 OHA'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 OHA 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 OHA 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 OHA, or for a drug-related criminal activity on or off the premises.

#### **OHA Policy**

OHA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first class mail the same day.

**Timing of the Notice [24 CFR 966.4(l)(3)(i)]**

OHA must give written notice of lease termination of:

- 14 calendar days in the case of failure to pay rent
- 3 calendar day notice considering the seriousness of the situation (but not to exceed 30 calendar days)
  - If the health or safety of other residents, OHA 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

**OHA Policy**

OHA will give written notice of 14 calendar days for nonpayment of rent. For all other lease terminations OHA 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 OHA 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.

**OHA Policy**

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

### **Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for pro-ration 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 OHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for OHA'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. OHA 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.

#### **OHA Policy**

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, OHA 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, OHA will seek the assistance of the court to remove the family from the premises as per state and local law.

OHA may not proceed with an eviction action if OHA 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 OHA evicts an individual or family for criminal activity, including drug-related criminal activity, OHA 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**

#### **OHA Policy**

A written record of every termination and/or eviction will be maintained by OHA 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

## **Appendix 13.1 OHA For-Cause Eviction Guidelines**

### **For-Cause Eviction Guidelines**

The For-Cause Eviction Guidelines are intended for use of OHA's staff in the implementation of existing OHA occupancy policies regarding tenant evictions for causes such as drug-related, weapons-related and/or violent criminal activities that threaten the health and safety or right to peaceful enjoyment of the premises by other tenants. These guidelines do not apply to cases that only involve the failure to pay rent or maintenance charges.

The guidelines are consistent with the OHA's commitment to make every reasonable effort to promote safer public housing communities and assure that residents are given legitimate opportunities for successful program participation.

The decision whether to initiate proceedings to terminate tenancy in all For-Cause Evictions remains a matter of judgment. Staff of OHA will consider all circumstances with each individual case.

The Deputy Executive Director or his/her designee is required to review all For-Cause Evictions.

### **Objective**

The guidelines are used by OHA staff to meet a series of objectives in weighing the variety of factors and considerations involved in responding to a lease violation. When in conflict, OHA will attempt to meet the objectives in order of importance. The order of importance of the objectives is as follows:

- **Protecting the residents of public housing, their neighbors, OHA staff, and others who work or visit OHA property from the negative impact and influences of drugs and other crimes**
- **Preventing behavior and acts that seriously damage or destroy OHA property, place such property at risk, or render it unsuitable for the purpose of providing safe and decent housing**
- **Preserve the tenancy and provide residents an opportunity to learn from mistakes that can be remediated.**

## Types of “For-Cause Evictions”

**In general, lease violations that may result in “For-Cause” evictions can be divided into three areas, with the first being the most serious and the third being the least serious.**

- **Crime is related to use, sale or manufacture of drugs; involves a weapon; is violent; or poses an immediate threat to health and safety.**
- **Crime is not related to drugs, does not involve a weapon, is not violent and does not pose an immediate threat.**
- **Lease violation - no crime involved**

## Circumstances of Lease Violation

**In all cases, a review is to be made of all circumstances of the event or events. Further considered is to be given to the following other related issues.**

- 1. Who was the person involved?**
  - Head of household or Co-tenant
  - Household member
  - Guest
- 2. Did the head of household or co-tenant know of the incidents or involvement?**
- 3. Have there been any prior incidents of a similar nature?**
- 4. Has there been any counseling or warning given to the head of household and/or co-tenant?**
- 5. Has there been any involvement of social services providers to the family?**
- 6. Would intervention by social services providers be appropriate?**
- 7. What have been the consequences for other residents in the unit and neighbors of the OHA property?**
- 8. What are the likely consequences for other residents in the unit and neighbors of the OHA property?**

## **Counseling, Warning, And Supportive Services Needs Assessment**

A meeting is to be held with the head or co-tenant in which the incidents and consequences are to be discussed. Following the discussion, a written summary of the discussion, including any warning and any instructions and expectations is to be sent to the head and co-tenant with copies to the tenant file along with any other appropriate documentation. If warranted by the serious

nature of the incident, by the threat to other residents or neighbors, by the number of incidents, or by the history of incidents, either a three-day or thirty-day notice is to be prepared and served.

When determined to be appropriate, the Housing Manager will coordinate with the Resident & Community Services Department to arrange the appropriate supportive services in response to the family's needs.

### **Types Of Notices Three (3)-Day Or Thirty (30)-Day**

Three (3)-Day Notices are warranted in the event of drug-related, weapon-related, and/or violent criminal acts, or lease violations which pose an immediate threat to the health and safety of other residents, OHA staff or surrounding neighbors, committed by the Head of Household or Co-tenant, which are substantiated with verifiable evidence.

Thirty (30)-Day Notices are appropriate for all other matters as described above when eviction is warranted.

### **File Review And Approval**

The Housing Manager prepares a case outline in chronological order.

The District Manger consults with the Housing Manager and will review all relevant information and forward the file to the Deputy Executive Director or his/her designee with a recommendation.

The Deputy Executive Director or his/her designee reviews all recommendations regarding For-Cause evictions. Only after receiving the Director's written approval shall such cases be filed. The Deputy Executive Director or his/her designee consults with the Director of Resident and Community Services and representatives of the legal community as appropriate and shall render a decision on each case within three days of receiving the recommendation. **Executive Director Review**

In the event that the Deputy Executive Director and his/her designee and the Authority's legal representative disagree on the course of action regarding a particular case, the file will be forwarded to the Executive Director for final decision.



## Chapter 14

### GRIEVANCES AND APPEALS

#### INTRODUCTION

This chapter discusses grievances and appeals pertaining to OHA 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 Non-citizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and resident 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 OHA'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 OHA 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 OHA 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 resident 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 residents in OHA 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**

OHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission.

##### **OHA Policy**

OHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

##### **Notice of Denial [24 CFR 960.208(a)]**

The OHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for OHA 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.F. for details concerning this requirement.

## **Scheduling an Informal Hearing**

### **OHA Policy**

A request for an informal hearing must be made in writing and delivered to OHA 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 OHA's notification of denial of admission.

The OHA must 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]**

### **OHA Policy**

The informal hearing will be conducted by an OHA staff 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 OHA.

The person conducting the hearing will make the determination whether the admission should be granted or denied.

If the participant disagrees with an informal hearing decision, the participant has the right to request a review by the Oakland Housing Authority's Deputy Executive Director or his/her authorized representative. The participant must request the review within 20 calendar days of the date or postmark of the Hearing Officer's decision. If the participant requests review by the Deputy Executive Director within the specified time period, no action adverse to the participant can be taken until the Deputy Executive Director issues a decision, or 30 calendar days elapse, whichever occurs first.

## **Informal Hearing Decision [PH Occ GB, p. 58]**

### **OHA Policy**

The OHA will notify the applicant of OHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, OHA 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 OHA 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 that OHA 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, OHA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, OHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

OHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

### **Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]**

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and OHA must consider such accommodations. OHA 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 OHA 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 OHA 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 resident, 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 OHA 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 OHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, OHA 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 OHA with a copy of the written request for appeal and proof of mailing.

**OHA Policy**

The OHA 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 OHA 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 OHA, of its decision. When the USCIS notifies OHA of the decision, OHA must notify the family of its right to request an informal hearing.

**OHA Policy**

The OHA 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 OHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of OHA 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***

OHA 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 OHA 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.

#### **OHA Policy**

The family must request discovery of OHA documents no later than 48 hours prior to the Informal 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 OHA, and to confront and cross-examine all witnesses on whose testimony or information OHA 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 OHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, OHA 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. OHA may, but is not required to provide a transcript of the hearing.

#### **OHA Policy**

OHA will not provide a transcript of an audio taped informal hearing.

### ***Hearing Decision***

The OHA 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 OHA must retain for a minimum of 5 years the following documents that may have been submitted to OHA by the family, or provided to OHA as part of the USCIS appeal or OHA 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 OHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of OHA 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]**

OHA must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any OHA action or failure to act involving the lease or OHA policies which adversely affect their rights, duties, welfare, or status.

OHA grievance procedure must be included in, or incorporated by reference in, the lease.

#### **OHA Policy**

The OHA grievance procedure will be incorporated by reference in the resident lease. The OHA must provide at least 30 days notice to residents and resident organizations setting forth proposed changes in OHA grievance procedure, and providing an opportunity to present written comments. Comments submitted must be considered by OHA before adoption of any grievance procedure changes by OHA.

#### **OHA Policy**

Residents and resident organizations will have 30 calendar days from the date they are notified by OHA of any proposed changes in OHA grievance procedure, to submit written comments to OHA.

The OHA must furnish a copy of the grievance procedure to each resident and to resident organizations.

#### **14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)] Section 15.0 Grivence policy**

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 resident may have with respect to OHA action or failure to act in accordance with the individual resident’s lease or OHA regulations which adversely affect the individual resident’s rights, duties, welfare or status
- **Complainant** – any resident whose grievance is presented to OHA or at the project management office
- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the resident 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 resident of the grounds for terminating the tenancy and for eviction
  - Right of the resident to be represented by counsel
  - Opportunity for the resident to refute the evidence presented by OHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the resident may have
  - A decision on the merits
- **Hearing Officer**– a person selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto
- **Resident** – the adult person (or persons) (other than a live-in aide)
  - Who resides in the unit, and who executed the lease with OHA 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 resident 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 OHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual resident issues relating to OHA. It is not applicable to disputes between residents not involving OHA. 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 OHA.

If HUD has issued a due process determination, OHA may exclude from OHA 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 OHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

The OHA may evict through the local judicial eviction procedures. In this case, OHA is not required to provide the opportunity for a hearing under OHA's grievance procedure as described above.

#### **OHA Policy**

The OHA is located in a due process State. Therefore, a grievance hearing is not required prior to initiation of eviction procedures.

#### **14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]**

Any grievance shall be personally presented within the time specified by written notice from OHA, or, if no such time is specified, within thirty (30) days of OHA action or failure to act giving rise to the dispute. The grievance must be presented in writing on a pre-printed form supplied by OHA or in any other written form chosen by the resident or orally. The presentation of the grievance shall be made to OHA district office with jurisdiction for the apartment in which the grievant resides. An attempt will be made to settle the grievance informally, by discussion and without a hearing. A summary of the discussion shall be prepared within five (5) work days. One copy shall be given to the grievant and one retained in OHA's resident file. The summary shall specify:

- A. The names of the participants.
- B. Dates of meeting.
- C. The nature of the proposed disposition of the grievance and the specific reason therefore, and
- D. The procedures by which a hearing under paragraph 4 below may be obtained if the grievant is not satisfied.

#### **14-III.E. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55]**

##### **Requests for Hearing and Failure to Request [24 CFR 966.55(a), (c), and (d)]**

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer, the hearing officer may waive this provision [24 CFR 966.55(d)].

The complainant must submit the request in writing for a grievance hearing within a reasonable time after receipt of the summary of informal discussion [24 CFR 966.55(a)]. The request must specify the reasons for the grievance and the action or relief sought.

##### **OHA Policy**

The resident must submit a written request for a grievance hearing to OHA within 10 business days of the resident's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, OHA'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 OHA's action in disposing of the complaint in an appropriate judicial proceeding [24 CFR 966.55(c)].

**Scheduling of Hearings [24 CFR 966.55(f)]**

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and OHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate OHA official.

**OHA 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 OHA.

The OHA may wish to permit the resident to request to reschedule a hearing for good cause.

**OHA Policy**

The resident may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict, which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, OHA may request documentation of the “good cause” prior to rescheduling the hearing.

**14-III.F. SELECTION OF HEARING OFFICER [24 CFR 966.55(b)]**

The grievance hearing must be conducted by an impartial person appointed by the Executive Director or Designee, other than the person who made or approved the OHA action under review, or a subordinate of such person.

**OHA Policy**

OHA grievance hearings will be conducted by a single hearing officer and not a panel. A Hearing Officer will be designated by the Executive Director or the Deputy Executive Director for Public Housing. Eligible OHA Hearing Officers will include management analysts or senior managers who have received training on hearing procedures.

Efforts will be made to assure that the person selected is not a friend, nor enemy, of the complainant and that they do not have a personal stake in the matter under dispute or will otherwise have an appearance of a lack of impartiality.

## **14-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]**

### **Rights of Complainant [24 CFR 966.56(b)]**

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any OHA documents, including records and regulations that are directly relevant to the hearing. The resident must be allowed to copy any such document. If OHA does not make the document available for examination upon request by the complainant, the OHA may not rely on such document at the grievance hearing.

#### **OHA Policy**

The family must request discovery of OHA documents no later than 48 hours prior to the grievance hearing.

- The right to be represented by counsel or other person chosen as the resident's representative and to have such person make statements on the resident's behalf.

#### **OHA Policy**

Hearings may be attended by the following applicable persons:

An OHA representative(s) and any witnesses for OHA

The resident and any witnesses for the resident

The resident's counsel or other representative

Any other person approved by OHA 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 resident's complaint, to controvert evidence relied on by OHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information OHA 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 determines that the issue has been previously decided in another proceeding.

### **Failure to Appear [24 CFR 966.56(d)]**

If the complainant or OHA fails to appear at a scheduled hearing, the hearing officer 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 OHA must be notified of the determination by the hearing officer: 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 OHA'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.

#### **OHA Policy**

If the resident does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the resident appears within 30 minutes of the scheduled

time, the hearing will be held. If the resident does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the resident fails to appear and was unable to reschedule the hearing in advance, the resident must contact OHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the resident 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 OHA must sustain the burden of justifying OHA 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. OHA and the resident 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)].

#### **OHA 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 OHA. 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 OHA fails to comply with the discovery requirements (providing the resident with the opportunity to examine OHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of OHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The hearing officer must require OHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate [24 CFR 966.56(f)].

The complainant or OHA 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)].

**OHA Policy**

OHA will record all Informal Hearings. The audio tape is available upon request.

**Accommodations of Persons with Disabilities [24 CFR 966.56(h)]**

The OHA 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 resident is visually impaired, any notice to the resident that is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of OHA's responsibilities pertaining to reasonable accommodation.

#### **14-III.H. DECISION OF THE HEARING OFFICER [24 CFR 966.57]**

The hearing officer must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the resident and OHA. OHA must retain a copy of the decision in the resident's folder. A copy of the decision, with all names and identifying references deleted, must also be maintained on file by OHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer [24 CFR 966.57(a)].

##### **OHA Policy**

In rendering a decision, the hearing officer will consider the following matters:

**OHA Notice to the Family:** The hearing officer will determine if the reasons for OHA'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 OHA policy.

**OHA Evidence to Support OHA 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 OHA'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 OHA policies. If the grounds for termination are not specified in the regulations or in compliance with OHA policies, then the decision of OHA will be overturned.

The hearing officer will issue a written decision to the family and OHA no later than 10 business days after the hearing. The report will contain the following information:

##### **Hearing information:**

- Name of the complainant
- Date, time and place of the hearing
- Name of the hearing officer
- Name of OHA 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 OHA's decision.

**Order:** The hearing report will include a statement of whether OHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct OHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct OHA to restore the family's status.

### **Procedures for Further Hearing**

#### **OHA 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 OHA will take effect and another hearing will not be granted.

**Final Decision [24 CFR 966.57(b)]**

The decision of the hearing officer is binding. However, the participant has the right to appeal the decision to the executive office with in 10 days of the OHA:

- The grievance does not concern OHA action or failure to act in accordance with or involving the complainant's lease on OHA policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer is contrary to Federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and OHA

**OHA Policy**

When OHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to OHA Executive Office within 10 business days of the date of the hearing officer's decision. If the Executive Office 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, or Executive Office in favor of OHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].

## Chapter 15

### PROGRAM INTEGRITY

#### INTRODUCTION

OHA is committed to ensuring that funds made available to OHA are spent in accordance with HUD requirements.

This chapter covers HUD and OHA 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 OHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures OHA 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**

#### **OHA Policy**

OHA anticipates that the vast majority of families and OHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that OHA's program is administered effectively and according to the highest ethical and legal standards, the OHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

OHA will provide each applicant and resident with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

OHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. OHA 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.

OHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

OHA staff will be required to review and explain the contents of all HUD- and OHA-required forms prior to requesting family member signatures.

OHA will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key OHA forms and form letters that request information from a family member.

OHA will provide each OHA 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, OHA will use a variety of activities to detect errors and program abuse.

### **Quality Control and Analysis of Data**

#### **OHA Policy**

OHA will employ a variety of methods to detect errors and program abuse, including:

OHA routinely will use available sources of up-front income verification to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

OHA will compare family-reported income and expenditures to detect possible unreported income.

### **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all PHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of OHA activities and notifies OHA of errors and potential cases of program abuse.

#### **OHA Policy**

OHA 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 OHA's error detection and abuse prevention efforts.

### **Individual Reporting of Possible Errors and Program Abuse**

#### **OHA Policy**

OHA will encourage staff, residents, and the public to report possible program abuse.

## **15-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **When the OHA Will Investigate**

#### **OHA Policy**

OHA 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 OHA 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.

OHA 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]**

OHA may investigate possible instances of error or abuse using all available OHA and public records. If necessary, OHA will require applicant/resident families to give consent to the release of additional information.

### **Analysis and Findings**

#### **OHA Policy**

OHA 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 OHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed OHA, 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 OHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

### **OHA Policy**

In the case of family-caused errors or program abuse, the OHA 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**

### **OHA Policy**

OHA 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 OHA 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 resident rent payment by the family, or an incorrect utility reimbursement to a family.

#### **Corrections**

Whether the incorrect rental determination is an overpayment or underpayment, OHA must promptly correct the resident rent and any utility reimbursement prospectively.

#### **OHA Policy**

Increases in the resident rent will be implemented only after the family has received 30 days notice.

Any decreases in resident rent will become effective the first of the month following the discovery of the error.

#### **Reimbursement**

Whether the family is required to reimburse OHA or OHA 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 OHA to use incorrect information provided by a third party. Refer 15- I C Notice and Appeals .

### **Family Reimbursement to OHA**

#### **OHA Policy**

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. OHA 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, OHA will terminate the family's lease in accordance with the policies in Chapter 13.

### **OHA Reimbursement to Family**

#### **OHA Policy**

OHA 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 OHA [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to OHA [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)].

### **OHA Policy**

Any of the following will be considered evidence of family program abuse:

Offering bribes or illegal gratuities to the OHA Board of Commissioners, employees, contractors, or other OHA representatives

Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to OHA 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

OHA 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 OHA may, at its discretion, impose any of the following remedies.

- OHA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to OHA).
- OHA 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).
- OHA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.
- OHA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

## **15-II.C. OHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of OHA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of an OHA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the OHA personnel policy.

OHA-caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

### **Repayment to the OHA**

The family is not required to repay an underpayment of rent if the error or program abuse is caused by OHA staff.

### **OHA Reimbursement to Family**

#### **OHA Policy**

OHA 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**

#### **OHA Policy**

Any of the following will be considered evidence of program abuse by OHA 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 OHA

- Disclosing confidential or proprietary information to outside parties

- Gaining profit as a result of insider knowledge of OHA 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**

### **OHA Policy**

When OHA determines that program abuse by a family or OHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, OHA 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 OHA 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 OHA's grievance process.



## Chapter 16

### PROGRAM ADMINISTRATION

#### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this ACOP. The policies are discussed in six 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 OHA-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 OHA 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 (OHAS). This part describes the PHAS indicators, how PHAs are scored under PHAS, and how those scores affect OHA.

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 OHA will follow.

Part VI: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the OHA's reporting responsibilities related to children with environmental intervention blood lead levels that are living in public housing.

## **PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]**

### **16-I.A. OVERVIEW**

OHA must establish allowances for OHA-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)].

OHA must also establish surcharges for excess consumption of OHA-furnished utilities [24 CFR 965.506].

OHA 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**

OHA must establish separate allowances for each utility and for each category of dwelling units OHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of an OHA 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 OHA does not furnish a range, the family must be granted a utility allowance for the range 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 about establishing utility allowances.

**Utility Allowance Revisions [24 CFR 965.507]**

OHA 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.

OHA 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.

**OHA Policy**

Between annual reviews of utility allowances, OHA will only revise its utility allowances due to a rate change, when required to by the regulation.

### **16-I.C. SURCHARGES FOR OHA-FURNISHED UTILITIES [24 CFR 965.506]**

For dwelling units subject to allowances for OHA-furnished utilities where check meters have been installed, the OHA 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 OHA's average utility rate. The basis for calculating the surcharges must be described in OHA's schedule of allowances. Changes in the amount of surcharges based directly on changes in the OHA's average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

For dwelling units served by OHA-furnished utilities where check meters have not been installed, OHA 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 OHA-furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of OHA-furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to the OHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

#### **OHA Policy**

The OHA does not have OHA-furnished utilities.

### **16-I.D. NOTICE REQUIREMENTS [965.502]**

OHA 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 OHA'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, OHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family [PH Occ GB, p. 172].

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

## **PART II: ESTABLISHING FLAT RENTS AND PUBLIC HOUSING MAXIMUM RENTS**

### **16-II.A. OVERVIEW**

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient. Public housing maximum rents are needed to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].

This part discusses how OHA establishes and updates flat rents and public housing maximum rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and public housing maximum rents are discussed in Chapter 6.

### **16-II.B. FLAT RENTS [24 CFR 960.253(b)]**

#### **Establishing Flat Rents**

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. The flat rent should be equal to the estimated rent for which the OHA could promptly lease the public housing unit after preparation for occupancy.

OHA must use a reasonable method to determine flat rents. In determining flat rents, OHAs 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 OHA
- Utilities provided by OHA

**Review of Flat Rents**

OHA must ensure that flat rents continue to mirror market rent values [24 CFR 960.253(b)].

**OHA Policy**

OHA will review flat rents on an annual basis, and adjust them as necessary to ensure that flat rents continue to mirror market rent values.

**Posting of Flat Rents****OHA Policy**

OHA will publicly post the schedule of flat rents in a conspicuous manner in the applicable OHA or project office.

**Documentation of Flat Rents [24 CFR 960.253(b)(5)]**

OHA must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by OHA in accordance with this method.

## **16-II.C. PUBLIC HOUSING MAXIMUM RENTS**

### **Establishing Public Housing Maximum Rents**

Oakland Housing Authority is 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, OHA 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 OHA. OHA may calculate a maximum rent on either a OHA- 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.

OHA 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**

#### **OHA Policy**

OHA will recalculate the public housing maximum rents on an annual basis.

### **Posting of Public Housing Maximum Rents**

#### **OHA Policy**

OHA will publicly post the schedule of public housing maximum rents in a conspicuous manner in the applicable OHA or project office.

### **Documentation of Public Housing Maximum Rents**

#### **OHA Policy**

OHA will maintain records that document how OHA determined the 95th percentile of TTP, whether the maximum rent was determined OHA-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 OHA**

### **16-III.A. OVERVIEW**

This part describes OHA's policies for recovery of monies that have been underpaid by families.

#### **OHA Policy**

When an action or inaction of a resident family results in the underpayment of rent or other amounts, OHA holds the family liable to return any underpayments to OHA.

OHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments. The term *repayment agreement* refers to a formal document signed by a tenant and provided to OHA in which a tenant acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

When a family refuses to repay monies owed to OHA, OHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil law suit
- State income tax set-off program

## **16-III.B. REPAYMENT POLICY**

### **Family Debts to OHA**

#### **OHA Policy**

Any amount due to OHA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, OHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, OHA will terminate the family's tenancy in accordance with the policies in Chapter 13. OHA will also pursue other modes of collection.

### **Repayment Agreement Guidelines**

#### ***Down Payment Requirement***

#### **OHA Policy**

Prior to the execution of a repayment agreement, the family must pay 25 percent of the balance owed to OHA.

#### ***Payment Thresholds***

#### **OHA Policy**

Amounts under \$1,000 must be repaid within 12 months.

Amounts between \$1,000 and \$1,999 must be repaid within 24 months.

Amounts between \$2,000 and \$2,999 must be repaid within 30 months.

Amounts between \$3,000 and 5,999 must be repaid within 36 months.

Amounts between \$6,000 and \$8,999 must be repaid within 48 months.

Amounts between \$9,000 and \$12,000 must be repaid within 60 months.

**Unless stipulated otherwise in court.**

#### ***Execution of the Agreement***

#### **OHA Policy**

The head of household and spouse/cohead (if applicable) must sign the repayment agreement.

#### ***Due Dates***

#### **OHA Policy**

All payments are due by the close of business on the 5th day of the month. If the 5th does not fall on a business day, the due date is the close of business on the first business day after the 5th.

***Non-Payment***

**OHA Policy**

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by OHA, OHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and OHA will terminate tenancy in accordance with the policies in Chapter 13.

If a family receives delinquency notices for unexcused late payments the repayment agreement will be considered in default, and OHA will terminate tenancy in accordance with the policies in Chapter 13.

***No Offer of Repayment Agreement***

**OHA Policy**

OHA will not enter into a repayment agreement if there is already a repayment agreement in place with the family, or the amounts owed by the family exceed the Federal or State threshold for criminal prosecution.

## PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)

### 16-IV.A. OVERVIEW

The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

### 16-IV.B. PHAS INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]

The table below lists each of the PHAS indicators, the points possible under each indicator, and a brief description of each indicator. OHA's performance is based on a combination of all four indicators.

<b>Indicator 1: Physical condition of OHA's properties</b>
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<b>Maximum Score: 30</b>
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- |  |
|--|
| <ul style="list-style-type: none"><li>• The objective of this indicator is to determine the level to which OHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary, and in good repair.</li><li>• To determine the physical condition of OHA's properties, inspections are performed of the following five major areas of public housing: site, building exterior, building systems, dwelling units, and common areas. The inspections are performed by an independent inspector arranged by HUD, and include a statistically valid sample of the units in the OHA's public housing portfolio.</li></ul> |
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<b>Indicator 2: Financial condition of OHA</b>
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<b>Maximum Score: 30</b>
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- |  |
|--|
| <ul style="list-style-type: none"><li>• The objective of this indicator is to measure the financial condition of OHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair.</li><li>• OHA's financial condition is determined by measuring OHA'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.</li></ul> |
|--|

**Indicator 3: Management operations of OHA****Maximum Score: 30**

- The objective of this indicator is to measure certain key management operations and responsibilities of OHA for the purpose of assessing OHA's management operations capabilities.
- OHA's management operations are assessed based on the following sub-indicators: vacant unit turnaround time, capital fund, work orders, OHA 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 OHA.
- OHA's score for this indicator is based on the results of resident surveys and the level of implementation and follow-up or corrective actions OHA takes based on the results of the survey.

#### **16-IV.C. PHAS SCORING [24 CFR 902.63 and 902.67]**

HUD's Real Estate Assessment Center (REAC) issues overall PHAS scores, which are based on the scores of the four PHAS indicators, and the components under each indicator. PHAS scores translate into a designation for each PHA as high performing, standard, or troubled.

A high performer is a PHA that achieves a score of at least 60 percent of the points available under each of the four indicators, and achieves an overall PHAS score of 90 or greater.

A standard performer is a PHA that has an overall PHAS score between 60 and 89, and does not achieve less than 60 percent of the total points available under one of the following Indicators: 1, 2, or 3.

A troubled performer is a PHA that achieves an overall PHAS score of less than 60, or achieves less than 60 percent of the total points available under more than one of the following indicators: 1, 2, or 3.

These designations can affect a PHA in several ways:

- High-performing PHAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
- PHAs that are standard performers may be required to submit an improvement plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)].
- PHAs with an overall rating of "troubled" are subject to additional HUD oversight, and are required to enter into a memorandum of agreement (MOA) with HUD to improve PHA performance [24 CFR 902.75].
- PHAs that fail to execute or meet MOA requirements may be referred to the Departmental Enforcement Center [24 CFR 902.77].

PHAs must post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status.

## **PART V: RECORD KEEPING**

### **16-V.A. OVERVIEW**

OHA 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, OHA 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**

#### **OHA Policy**

During the term of each public housing tenancy, and for at least four years thereafter, OHA will keep all documents related to a family's eligibility, tenancy, and termination. In addition, OHA 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 OHA budget and financial statements for the program

- Other records as determined by the OHA 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.

### **OHA Policy**

All applicant and participant information will be kept in a secure location and access will be limited to authorized OHA staff.

OHA 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 OHA 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 *Enterprise Income Verification (EIV) System PHA Security Procedures*, Version 1.2, issued January 2005.

### **OHA Policy**

Prior to utilizing HUD's EIV system, OHA will adopt and implement EIV security procedures required by HUD.

### **Criminal Records**

OHA may only disclose the criminal conviction records which the OHA receives from a law enforcement agency to officers or employees of the OHA, or to authorized representatives of OHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

OHA must establish and implement a system of records management that ensures that any criminal record received by OHA 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 OHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

OHA must establish and implement a system of records management that ensures that any sex offender registration information received by OHA 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 OHA 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. OHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the OHA receives a verification document that provides such information, OHA should not place this information in the tenant file. OHA should destroy the document.

**PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

**16-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e)]**

OHA has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing.

OHA 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. OHA must also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

**OHA Policy**

OHA 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.

OHA 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.

## **GLOSSARY**

### **A. ACRONYMS USED IN SUBSIDIZED HOUSING**

<b>AAF</b>	Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)
<b>ACC</b>	Annual contributions contract
<b>ADA</b>	Americans with Disabilities Act of 1990
<b>BR</b>	Bedroom
<b>CDBG</b>	Community Development Block Grant (Program)
<b>CFR</b>	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
<b>CPI</b>	Consumer price index (published monthly by the Department of Labor as an inflation indicator)
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FHA</b>	Federal Housing Administration
<b>FICA</b>	Federal Insurance Contributions Act (established Social Security taxes)
<b>FMR</b>	Fair market rent
<b>FR</b>	Federal Register
<b>FSS</b>	Family Self-Sufficiency (Program)
<b>FY</b>	Fiscal year
<b>FYE</b>	Fiscal year end
<b>GAO</b>	Government Accountability Office
<b>GR</b>	Gross rent
<b>HAP</b>	Housing assistance payment
<b>HCV</b>	Housing choice voucher
<b>HQS</b>	Housing quality standards.
<b>HUD</b>	Department of Housing and Urban Development
<b>HUDCLIPS</b>	HUD Client Information and Policy System
<b>IG</b>	(HUD Office of) Inspector General
<b>IPA</b>	Independent public accountant
<b>IRA</b>	Individual Retirement Account
<b>IRS</b>	Internal Revenue Service
<b>JTPA</b>	Job Training Partnership Act
<b>LBP</b>	Lead-based paint

<b>MSA</b>	Metropolitan statistical area (established by the U.S. Census Bureau)
<b>MTCS</b>	Multi-family Tenant Characteristics System (now the Form HUD-50058 submodule of the PIC system)
<b>NOFA</b>	Notice of funding availability
<b>OMB</b>	Office of Management and Budget
<b>PASS</b>	Plan for Achieving Self-Support
<b>PHA</b>	Public housing agency
<b>PHRA</b>	Public Housing Reform Act of 1998 (also known as the Quality Housing and Work Responsibility Act)
<b>PIC</b>	PIH Information Center
<b>PIH</b>	(HUD Office of) Public and Indian Housing
<b>PS</b>	Payment standard
<b>QC</b>	Quality control
<b>QHWRA</b>	Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)
<b>REAC</b>	(HUD) Real Estate Assessment Center
<b>RFP</b>	Request for proposals
<b>RFTA</b>	Request for tenancy approval
<b>RIGI</b>	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
<b>SEMAP</b>	Section 8 Management Assessment Program
<b>SRO</b>	Single room occupancy
<b>SSA</b>	Social Security Administration
<b>SSI</b>	Supplemental security income
<b>TANF</b>	Temporary assistance for needy families
<b>TR</b>	Tenant rent
<b>TTP</b>	Total tenant payment
<b>UA</b>	Utility allowance
<b>URP</b>	Utility reimbursement payment
<b>UPCS</b>	Uniform Property Conditions Standards

## **B. GLOSSARY OF TERMS IN SUBSIDIZED HOUSING**

***Absorption.*** In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

***Accessible.*** The facility or portion of the facility can be approached, entered, and used by individuals with physical handicaps.

***Adjusted Income.*** Annual income, less allowable HUD deductions.

***Adjusted Annual Income.*** Same as Adjusted Income.

***Administrative fee.*** Fee paid by HUD to the PHA for administration of the program. See §982.152.

***Administrative fee reserve*** (formerly “operating reserve”). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See §982.155. Administrative fee reserves from FY 2004 and 2005 funding are further restricted to activities related to the provision of tenant-based rental assistance authorized under Section 8.

***Administrative plan.*** The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA’s board and included as a supporting document to the PHA Plan. See §982.54.

***Admission.*** The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

***Amortization payment.*** In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.

***Annual contributions contract (ACC).*** The written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

***Annual Income.*** The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

***Applicant (applicant family).*** A family that has applied for admission to a program but is not yet a participant in the program.

***Area Exception Rent.*** An amount that exceeds the published FMR. See §982.504(b).

***“As-paid” States.*** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

***Assets.*** (See Net Family Assets.)

***Auxiliary aids.*** Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance.

**Budget authority.** An amount authorized and appropriated by the Congress for payment to HAS under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

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

**Child care expenses.** 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.

**Citizen.** A citizen or national of the United States.

**Co-head.** An individual in the household who is equally responsible for the lease with the head of household. A family may have a co-head or spouse but not both. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.

**Common space.** In shared housing: Space available for use by the assisted family and other occupants of the unit.

**Computer match.** The automated comparison of data bases containing records about individuals.

**Confirmatory review.** An on-site review performed by HUD to verify the management performance of a PHA.

**Consent form.** Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

**Congregate housing.** Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see §982.606 to §982.609.

**Contiguous MSA.** In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

**Continuously assisted.** An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

**Contract.** (See Housing Assistance Payments Contract.)

**Contract authority.** The maximum annual payment by HUD to a PHA for a funding increment.

**Cooperative** (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type: see §982.619.

**Covered families.** Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

**Dependent.** A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

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

**Disabled family.** A family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

**Disabled person.** See Person with Disabilities.

**Displaced family.** A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

**Domicile.** The legal residence of the household head or spouse as determined in accordance with State and local law.

**Drug-related criminal activity.** As defined in 42 U.S.C. 1437f(f)(5).

**Drug-trafficking.** The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

**Economic Self-Sufficiency Program.** Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see §5.603(c).

**Elderly family.** A family whose head, spouse, or sole member is a person who is at least 62 years of age; or two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

**Elderly Person.** An individual who is at least 62 years of age.

**Eligible Family (Family).** A family that is income eligible and meets the other requirements of the Act and Part 5 of 24 CFR.

**Employer Identification Number (EIN).** The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

**Evidence of citizenship or eligible status.** The documents which must be submitted to evidence citizenship or eligible immigration status. (See §5.508(b).)

**Extremely Low Income Family.** A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. (CFR 5.603)

**Facility.** All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

**Fair Housing Act** means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988

**Fair market rent (FMR).** The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the Federal Register in accordance with 24 CFR part 888.

**Family.** Includes but is not limited to the following, and can be further defined in PHA policy.

- A family with or without children (the temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size)
- An elderly family or a near-elderly family
- A displaced family
- The remaining member of a tenant family
- A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

**Family rent to owner.** In the voucher program, the portion of rent to owner paid by the family.

**Family self-sufficiency program (FSS program).** The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

**Family share.** The portion of rent and utilities paid by the family. For calculation of family share, see §982.515(a).

**Family unit size.** The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

**Federal agency.** A department of the executive branch of the Federal Government.

**Foster Child Care Payment.** Payment to eligible households by state, local, or private agencies appointed by the State, to administer payments for the care of foster children.

**Full-time Student.** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (CFR 5.603)

**Funding increment.** Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

**Gross rent.** The sum of the rent to owner plus any utility allowance.

**Group home.** A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see §982.610 to §982.614.

**Handicap.** Any condition or characteristic that renders a person an individual with handicaps. See 24CFR 8.3.

**Handicap Assistance Expense.** See “Disability Assistance Expense.”

**HAP contract.** Housing assistance payments contract. (Contract). A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

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

**Housing assistance payment.** The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

**Housing agency (HA).** A State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. (“PHA” and “HA” mean the same thing.)

**Housing Quality Standards.** The HUD minimum quality standards for housing assisted under the voucher program.

**HUD.** The Department of Housing and Urban Development.

**Imputed Asset.** Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

**Imputed Income.** HUD passbook rate multiplied by the total cash value of assets. Calculation used when net family assets exceed \$5,000.

**Imputed welfare income.** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family’s annual income and therefore reflected in the family’s rental contribution.

**Income.** Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

**Income For Eligibility.** Annual Income.

**Income information** means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the State's unemployment compensation law, including any Social Security Number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, Employer Identification Number of an employer reporting wages under a State unemployment compensation law
- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
- Unearned IRS income and self-employment, wages and retirement income
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

**Individual with handicaps.** 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.

**Initial PHA.** In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

**Initial payment standard.** The payment standard at the beginning of the HAP contract term.

**Initial rent to owner.** The rent to owner at the beginning of the HAP contract term.

**Jurisdiction.** The area in which the PHA has authority under State and local law to administer the program.

**Landlord.** Either the owner of the property or his/her representative or the managing agent or his/her representative, as shall be designated by the owner.

**Lease.** A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

**Live-in aide.** A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

**Local Preference.** A preference used by the PHA to select among applicant families.

**Low Income Family.** A family whose income does not exceed 80% of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80% for areas with unusually high or low incomes.

**Manufactured home.** A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see §982.620 and §982.621.

**Manufactured home space.** In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See §982.622 to §982.624.

**Medical expenses.** Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance. (A deduction for elderly or disabled families only.) These allowances are given when calculating adjusted income for medical expenses in excess of 3% of annual income.

**Merger Date.** October 1, 1999.

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

**Mixed family.** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

**Monthly adjusted income.** One twelfth of adjusted income.

**Monthly income.** One twelfth of annual income.

**Mutual housing.** Included in the definition of “cooperative.”

**National.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**Near-elderly family.** A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

**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.

- 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 §5.609.
- 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.

**Noncitizen.** A person who is neither a citizen nor national of the United States.

**Notice of Funding Availability (NOFA).** For budget authority that HUD distributes by competitive process, the Federal Register document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

**Office of General Counsel (OGC).** The General Counsel of HUD.

**Owner.** Any person or entity with the legal right to lease or sublease a unit to a participant.

**PHA Plan.** The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

**PHA's quality control sample.** An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

**Participant (participant family).** A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

**Payment standard.** The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

**Persons With Disabilities.** A person who has a disability as defined in 42 U.S.C. 423 or a developmental disability as defined in 42 U.S.C. 6001. Also includes a person who is determined, under HUD regulations, to have a physical or mental impairment that is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. For purposes of reasonable accommodation and program accessibility for persons with disabilities, means and “individual with handicaps” as defined in 24 CFR 8.3. Definition does not exclude persons who have AIDS or conditions arising from AIDS, but does not include a person whose disability is based solely on drug or alcohol dependence (for low-income housing eligibility purposes). See “Individual with handicaps”

**Portability.** Renting a dwelling unit with Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

**Premises.** The building or complex in which the dwelling unit is located, including common areas and grounds.

**Private space.** In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

**Processing entity.** The person or entity that, under any of the programs covered, is responsible for making eligibility and related determinations and any income reexamination. In the Section 8 program, the “processing entity” is the “responsible entity.”

**Project owner.** The person or entity that owns the housing project containing the assisted dwelling unit.

**Public Assistance.** Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by Federal, state, or local governments.

**Public Housing Agency (PHA).** Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

**Reasonable rent.** A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

**Receiving PHA.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

**Recertification.** Sometimes called reexamination. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.

**Remaining Member of Tenant Family.** Person left in assisted housing who may or may not normally qualify for assistance on own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

**Rent to owner.** The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

**Residency Preference.** A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (“residency preference area”).

**Residency Preference Area.** The specified area where families must reside to qualify for a residency preference.

**Responsible entity.** For the public housing and the Section 8 tenant-based assistance, project-based certificate assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

**Secretary.** The Secretary of Housing and Urban Development.

**Section 8.** Section 8 of the United States Housing Act of 1937.

**Section 8 covered programs.** All HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under section 202 of the Housing Act of 1959.

**Section 214** Section 214 of the Housing and Community Development Act of 1980, as amended

**Section 214 covered programs** is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in §5.500.

**Security Deposit.** A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

**Set-up charges.** In a manufactured home space rental: Charges payable by the family for assembling, skirting and anchoring the manufactured home.

**Shared housing.** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see §982.615 to §982.618.

**Single Person.** A person living alone or intending to live alone.

**Single room occupancy housing (SRO).** A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see §982.602 to §982.605.

**Social Security Number (SSN).** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

**Special admission.** Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

**Special housing types.** See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

**Specified Welfare Benefit Reduction.** Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

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

**State Wage Information Collection Agency (SWICA).** The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

**Subsidy standards.** Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

**Suspension.** Stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension. This practice is also called "tolling".

**Tenancy Addendum.** For the Housing Choice Voucher Program, the lease language required by HUD in the lease between the tenant and the owner.

**Tenant.** The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

**Tenant rent to owner.** See "Family rent to owner".

**Term of Lease.** The amount of time a tenant agrees in writing to live in a dwelling unit.

**Total Tenant Payment (TTP).** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

**Uniform Property Conditions Standards.**

**Unit.** Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.

**Utility allowance.** If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

**Utility reimbursement.** In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

**Utility hook-up charge.** In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

**Vacancy Loss Payments.** (*Applies only to pre-10/2/95 HAP Contracts in the Rental Certificate Program*). When a family vacates its unit in violation of its lease, the owner is eligible for 80% of the contract rent for a vacancy period of up to one additional month, (beyond the month in which the vacancy occurred) if s/he notifies the PHA as soon as s/he learns of the vacancy, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

**Very Low Income Family.** A low-income family whose annual income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

**Violent criminal activity.** Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

**Voucher (Housing Choice Voucher).** A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

**Voucher holder.** A family holding a voucher with an unexpired term (search time).

**Voucher program.** The housing choice voucher program.

**Waiting list admission.** An admission from the PHA waiting list.

**Welfare assistance.** Income assistance from Federal or State welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. FOR THE FSS PROGRAM (984.103(b)), “welfare assistance” includes only cash maintenance payments from Federal or State programs designed to meet a family’s ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or Social Security.

**Welfare-to-work (WTW) family.** A family assisted by a PHA with Voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).