Oakland Housing Authority

Admissions and Continued Occupancy Policy

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OAKLAND HOUSING AUTHORITY
ADMISSIONS AND CONTINUED OCCUPANCY POLICY (ACOP)

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Glossary

INTRODUCTION

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 Admissions and Continued Occupancy Policy ("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 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 non-mandatory 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 provide 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.

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

Abbreviations

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

Abbreviation	Document
CFR	Code of Federal Regulations
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.

Document and Location
Code of Federal Regulations http://www.ecfr.gov
Earned Income Disregard FAQ www.hud.gov/offices/pih/phr/about/ao_faq_eid.cfm

Enterprise Income Verification (EIV) System OHA Security Procedures, Version 1.2, issued January 2005 http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/eivsecguideOHA.pdf
Executive Order 11063 http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm
Federal Register http://www.gpo.gov/fdsys/search/getfrtoc.action
General Income and Rent Determination FAQ www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm
Housing Choice Voucher Program Guidebook (7420.10G), April 2001. www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm
HUD Guidelines for Projecting Annual Income When Upfront Income Verification (UIV) Data is Available http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/guideprojincome.doc
HUD-50058 Instruction Booklet http://www.hud.gov/offices/pih/systems/pic/50058/pubs/ib/form50058ib.pdf
Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004 http://www.hud.gov/offices/fheo/library/huddojstatement.pdf
Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007http://www.hud.gov/offices/fheo/promotingfh/FederalRegistepublishedguidance.pdf
Notice PIH 2007-27 (HA), Disallowed Costs and Sanctions Resulting from On-Site Monitoring Reviews
Notice PIH 2012-10, Verification of Social Security Numbers (SSNs) and Supplemental Security Income (SSI) Benefits; and Effective Use of the Enterprise Income Verification (EIV) System's Identity Verification Report http://portal.hud.gov/huddoc/pih2012-10.pdf
Notice PIH 2010-19, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System http://www.hud.gov/offices/pih/publications/notices/10/pih2010-19.pdf
Notice PIH 2010-26 (HA), Nondiscrimination and Accessibility Notice http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf
OMB Circular A-133 http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2010
Public Housing Occupancy Guidebook, June 2003 http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm
Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions http://www.hud.gov/offices/pih/programs/ph/rhiip/faq.cfm

VAWA Reauthorization Act https://www.govinfo.gov/content/pkg/FR-2023-01-04/pdf/2022-28073.pdf
Verification FAQs http://www.hud.gov/offices/pih/programs/ph/rhiip/faq_verif.cfm
Verification Guidance, March 2004 (attachment to Notice PIH 2004-1) http://www.hud.gov/offices/pih/publications/notices/04/verifguidance.pdf

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

Guidebooks, handbooks and other HUD-published and federal resources may be found at the HUD Clips website:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips.

APPENDICES

Lease Packet
• Lease and the following attachments:
• A. Grievance Procedures
• B. House Rules
• C. Mold Notification
• D. Lead Based Paint Disclosure
• E. Pest Control
• F. Pet Agreement
• G. Schedule of Maintenance Fees
• H. Parking policy
• I. Drug Free Environment
• J. Community Service Eligibility Form
• K. Flat Rent Notification and Election Forms
• L. Accessible Unit Notification
• M. Unlawful activities
• N. Parking Policy and Fees
• O. VAWA

CHAPTER 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

OHA receives its operating subsidy for the public housing program from HUD, and OHA is not a federal department or agency. The Oakland Housing Authority ("OHA") 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: THE PUBLIC HOUSING AGENCY (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.

OHA is governed by a Board of Commissioners. This document will refer to the "Board of Commissioners" as "The Board". Commissioners are appointed in accordance with state housing law and generally serve in the same capacity as the directors of a corporation. The Board establishes policies under which OHA conducts business, and ensures that those policies are followed by OHA 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 is 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 OHA'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 OHA 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 Board and submitted to HUD.

1-I.C. OHA MISSION

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

OHA is committed to providing excellent service to all public housing applicants, residents and the public. In order to provide superior service, OHA aspires 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 housing that is safe, habitable, functionally adequate, operable, and free of health and safety hazards—in compliance with the National Standards for the Physical Inspection of Real Estate: Inspection Standards (NSPIRE) 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 service 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 United States Housing Act of 1937 ("Act") is responsible for the birth of federal housing program initiatives, known as public housing. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing for low-income residents. There have been many changes to the program since its inception in 1937.

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

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

In 1998, the Quality Housing and Work Responsibility Act ("QHWRA") – also known as the Public Housing Reform Act or Housing Act of 1998 – was signed into law. Its purpose was to provide more private sector management guidelines to the public housing program and provide residents with greater choices. It also allowed OHA 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 OHA 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.

On July 29, 2016, the Housing Opportunity Through Modernization Act of 2016 (HOTMA) was signed into law. HOTMA made numerous changes to statutes governing HUD programs, including sections of the United States Housing Act of 1937. Title I of HOTMA contains 14 different sections that impact the public housing and Section 8 programs. The Final Rule implementing broad changes to income and assets in Sections 102 and 104 of HOTMA, and for PHAs that administer the public housing program over-income provisions in Section 103, was officially published in the Federal Register on February 14, 2023. On September 29, 2023, HUD issued notice PIH 2023-27, which provided guidance to PHAs on the implementation of the program changes described in the Final Rule.

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 OHA 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 OHA to combine operating, capital, and tenant-based assistance funds into a single agency-wide funding source. The purpose of the MTW program is to give OHA and HUD the flexibility to find new ways to: reduce cost and achieve greater cost 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 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's role 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 OHA policy.

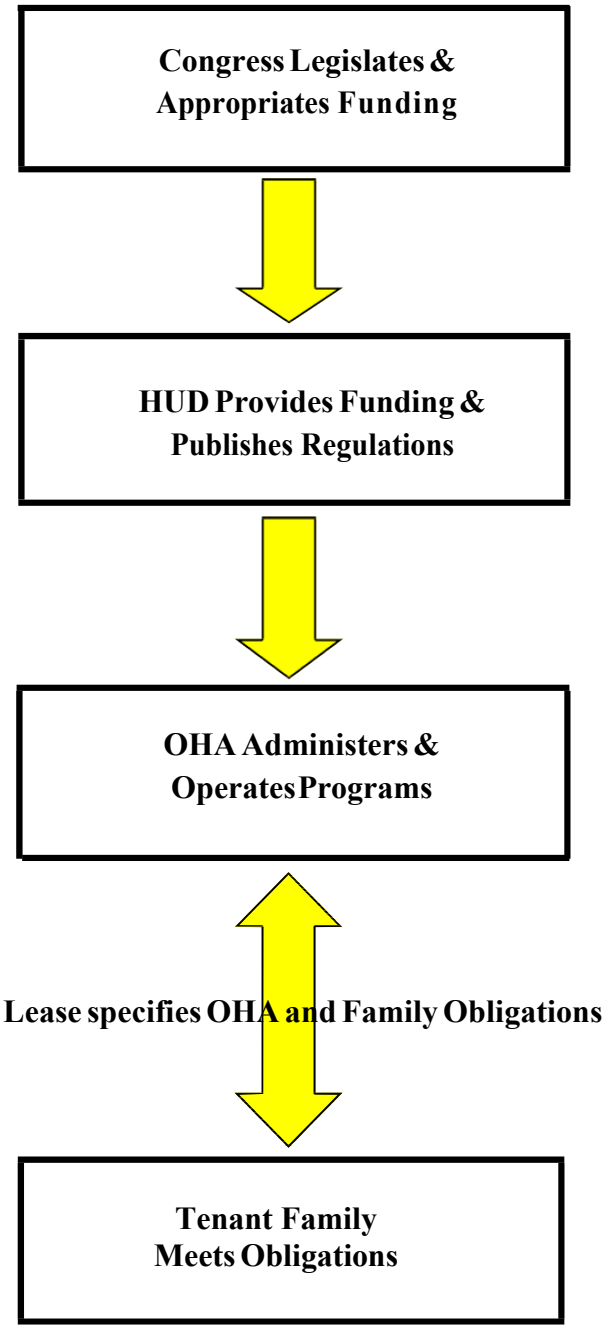
1-II.C. PUBLIC HOUSING PARTNERSHIPS

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 OHA
- Allocate capital funding to OHA
- Provide technical assistance to OHA regarding interpreting and applying program requirements
- Monitor OHA compliance with program requirements and OHA 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 site-based waiting lists 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 safe, habitable dwelling units (including assuring compliance with NSPIRE)
- Use 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 ACC, 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 responsibilities included but not limited to:

- 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 terminating the lease
- Use the assisted unit only for residence and as the sole residence of the family; not sublet the unit or assign the lease
- Promptly notify 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 effectively.

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: OHA-Owned or Leased Projects – General Provisions
- 24 CFR Part 966: Lease and Grievance Procedures

PART III: THE ADMISSIONS AND CONTINUED OCCUPANCY POLICY (ACOP)

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 laws and regulations, HUD requirements, and OHA's MTW 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 covers OHA policies on these subjects:

- Standards for determining eligibility, suitability for tenancy, and the size and type of the unit needed (Chapters 3 and 5)
- The organization of the site-based waiting lists and how families are selected and offered available units, including any OHA admission preferences, procedures for removing applicant names from the site-based waiting lists, and procedures for closing and reopening OHA's site-based waiting lists (Chapter 4)
- The method for achieving deconcentration of poverty and income-mixing of public housing developments (Chapter 4)
- Procedures for verifying the information the family has provided (Chapter 7)
- Lease Requirements (Chapter 8)
- Interim redeterminations of family income and composition (Chapter 9)
- Polices and rules about safety and ownership of animals in public housing (Chapter 10)
- Policies regarding community service requirements (Chapter 11)
- Transfer policies and the circumstances under which a transfer would take precedence over an admission (Chapter 12)
- Grievance procedures (Chapter 14)
- Policies concerning payment by a family to OHA of amounts the family owes OHA (Chapter 15 and 16)

Mandatory vs. Discretionary Policy

HUD makes a distinction between mandatory policies and non-mandatory policies:

- 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 OHA to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies OHA has adopted. OHA's ACOP is the document that contains and clarifies OHA 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 OHA policy, even though it is not mandatory, provides a OHA with a "safe harbor." If OHA adopts an alternative 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 from that suggested by HUD, but OHA 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.

OHA Policy

OHA will review and update the ACOP at least once a year, and more often if needed, to reflect changes in regulations, OHA 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 OHA 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 OHA 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. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. 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)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012 and further clarified in Notice PIH 2014-20
- Violence Against Women Act (VAWA)
- 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

OHA fully complies with all federal, state and local nondiscrimination laws; the Americans with Disabilities Act; and the HUD regulations governing Fair Housing and Equal Opportunity. OHA does not discriminate on the basis of race, color, religion, sex, gender identity, gender expression, marital status, sexual orientation, national origin, ancestry, familial status, source of income, disability, medical condition, age, occupational status, genetic information, association with a member of a protected class, engagement in protected activity, sex-pregnancy or any other unlawful basis.

Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18. [FR Notice 02/03/12]

OHA Policy

OHA will not use any of the factors above to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the public housing program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or tenant toward or away from a particular area based on any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class

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:

- provision of telecommunication devices for the deaf
- provision of sign language interpreters, as requested
- provision of readers and amanuenses, as requested
- use of barrier-free meeting places
- provision of a discrimination complaint procedure

Providing Information to Families

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

Discrimination Complaints

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

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

Upon receipt of a housing discrimination complaint, OHA is required to:

- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted
- Keep records of all complaints, investigations, notices and corrective actions [Notice PID 2014-20]

OHA Policy

Accordingly, OHA will assist any family that believes they have suffered illegal discrimination by providing copies of the appropriate housing discrimination forms. OHA will also assist families in completing the forms, if requested. The address of the nearest HUD Office of Fair Housing and Equal Opportunity will also be provided as well as the California Department of Fair Housing and Equal Opportunity (FHEO).

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.

OHA must ensure that persons with disabilities have full access to 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].

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

All applicants and resident families will be asked on the intake application, reexamination documents, and notices of adverse action by OHA if they require any reasonable accommodation 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 use our programs and services, please contact OHA 504/ADA Coordinator." 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 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 otherwise be 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 site-based 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.
- OHA will request the verifying entity to state whether the accommodation will be needed on a permanent or temporary basis.
- If a reasonable accommodation is approved on a temporary basis, OHA will require an annual recertification to verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability continue to require the requested accommodation. If a reasonable accommodation is approved on a permanent basis, an annual recertification of the disability will not be required. A required annual recertification of the disability will be conducted in conjunction with

the regularly scheduled annual reexamination of income and family composition in accordance with the policies set in Chapter 9.

- Medical records will not be accepted or retained in the participant's file.

- If OHA does receive documentation from a knowledgeable professional that contains information regarding an individual's specific diagnosis, treatment, the nature or severity of the disability, OHA will destroy the documentation. In place of the information, OHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26 (HA)].

2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act, Notice PIH 2010-26].

OHA 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 OHA, or fundamentally alter the nature of OHA's operations (including the obligation to comply with HUD requirements and regulations).

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors, such as the overall size of OHA's program with respect to number of employees, type of facilities and size of budget, type of operations including composition and structure of workforce, the nature and cost of the requested accommodation, 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, OHA 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 OHA 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.

When units offered to accommodate a reasonable accommodation request have been rejected, OHA may request an "interactive meeting" to allow the resident to state the reasons for rejecting the units offered and explain the nexus between their disability and the need for an alternative accommodation. OHA will document the outcome of the meeting and provide a summary in writing within 15 business days.

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).

Request for an extra bedroom for medical equipment required by a household member with disability should be made in writing. OHA will obtain third-party verification that the extra bedroom is medically necessary. OHA personnel will verify that all living and sleeping rooms in the current unit are insufficient to meet such need before OHA shall consider increasing the bedroom size or subsidy of the family. Note that supplies are not considered medical equipment. The extra bedroom cannot be used as storage. The actual equipment in the extra bedroom should be verified by OHA during routinely scheduled inspections of the unit

Request for an extra bedroom due to a family member's disability should also be made in writing. Third-party verification will be required in order for OHA to determine if the extra bedroom is a medical necessity.

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) and video relay service (VRS), and video remote interpreting (VRI) 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

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

Notice PIH 2010-26

- 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

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

- This policy describes the key policies that govern OHA's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally funded housing programs.
- OHA 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

OHA'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(l)(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, 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

On December 19, 2003 HUD published guidance designed to assist housing authorities to comply with Title VI of the Civil Rights Act of 1964 ("Title VI") and implementing regulations. Title VI, 42 U.S.C. § 2000d et seq., was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

While most individuals living in the United States read, write, speak and understand English, there are many for whom English is not their primary language. If these individuals have a limited ability to read, write, speak or understand English, they are considered limited English proficient ("LEP"). Language for LEP Persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information relevant to the public housing program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register*.

Recipients of federal financial assistance are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons and have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government programs, services, and activities.

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 ACOP, LEP persons are all public housing applicants and tenants or their authorized representative (which could be their parents or other family members). The exception to this will be during times when any of the public housing wait lists are open or for outreach material that explain how to access the program. In these instances, LEP persons will include all potential applicants. In all cases, OHA will determine language services provided LEP populations based on data for the City of Oakland.

In order to determine the level of access needed by LEP persons who speak a particular language, 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. ORAL INTERPRETATION

OHA will offer competent interpretation services free of charge, upon request, to the LEP person.

OHA Policy

OHA will utilize a language line for telephone interpreter services.

OHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" may not be reasonable where the costs imposed substantially exceed the benefits. Where feasible and available and according to its language assistance plan (LAP), OHA will designate certified bilingual staff to act as interpreters and translators to assist LEP clients.

Bilingual staff employed by OHA who will provide interpretation must either be certified or pass a required test, which will be facilitated by OHA's Human Resources Department.

2-III.C. WRITTEN TRANSLATION

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

OHA Policy

In order to comply with written translation obligations, OHA will only translate those documents that are necessary to provide essential services. The documents will be revised as business needs change and OHA will accept recommendations from the City of Oakland concerning the need to translate certain documents. Approved vendors will be utilized for this service. Translation of other documents, if needed, can be provided orally.

2-III.D. IMPLEMENTATION PLAN

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

OHA Policy

OHA will develop a written language assistance plan (LAP), 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 LAP annually as part of the MTW Annual Plan. The LAP will address the identified needs of the LEP populations served, or potentially served, by its programs. In compliance with federal guidelines, OHA shall make reasonable efforts to provide free language assistance for its LEP clients in its public housing program so as to ensure that these persons have meaningful access to OHA programs and activities.

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

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

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

"Is regarded as having an impairment" is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as 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 a person with a 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 household members as required.
  - Consent to OHA's collection and use of family information as provided for in OHA-provided consent forms.
  - Not currently be receiving a duplicative subsidy.
  - Meet net asset and property ownership restriction requirements.
- 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 OHA to deny admission as well as the asset limitation for public housing.

The program rules discussed within this plan are primarily those required by HUD. OHA is authorized under the Moving to Work (MTW) Demonstration program to develop and adopt reasonable policies and processes to explore and test innovative methods of delivering public housing assistance and supportive services to low-income families in Oakland. MTW policies and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard public housing rules and regulations apply.

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 explains HUD's eligibility rules.

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.105(a)(2), 24 CFR 5.403, FR Notice 02/14/23, Notice PIH 2014-20, and Notice PIH 2023-27]

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

Family (Notice PIH 2014-20, 24 DFR 5.403)

To be eligible for admission, an applicant must qualify as a family.

The term *family,* as defined by HUD, includes but is not limited to the following, regardless to actual or perceived sexual orientation, gender identity, or marital status:

- A single person who may be elderly, displaced, disabled, near elderly, or any other single person
- An otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older
- A group of persons residing together that includes but is not limited to:
  - A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family),
  - An elderly family
  - A near-elderly family
  - A disabled family
  - A displaced family
  - The remaining member of a tenant family

Gender Identity means actual or perceived gender characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

OHA Policy

Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes.

Household

Household is a broader term that includes additional people who, with 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

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

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault or stalking, OHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault and stalking, see section 16-VII.D of this plan.)
- If a court determines the disposition of property between members of the assisted family , OHA is bound by the court's determination of which family members continue to receive assistance. There can only be one subsidy. OHA will consider a 50-50 decision to be a non-decision.

OHA Policy

When a family on the site-based waiting list(s) breaks up into two otherwise eligible families, only one of the new families may retain the original application date. Other former family members may submit a new application with a new application date if the site-based 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 retain occupancy of the unit.

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

In the absence of a judicial decision or an agreement among the original family members, OHA will determine which family retains their placement on the site-based waiting list(s) 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) The interest of any family member who is a victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave a public housing unit as a result of such actual or threatened abuse, and provides documentation in accordance with section 16-VII.D of this ACOP;

(4) Any possible risks to family members as a result of criminal activity; and

(5) 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 refer to Chapter 6, Section 6- I.B, for the policy on "Caretakers for a Child.")

OHA Policy

OHA will deny the request of a Head, Co-head, or Spouse to transfer assistance to remaining family members, when the Head, Co-head, or Spouse requests program termination or no longer requires assistance. Notice will be sent to the family within 10 days of the decision to propose termination of assistance.

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

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

The family may designate any qualified family member as the head of household. A qualified family member means a person who 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. SPOUSE, CO-HEAD, AND OTHER ADULT

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

Spouse means the marriage partner of the head of household.

OHA Policy

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

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

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

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

3-I.F. DEPENDENTS AND MINORS [24 CFR 5.603]

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

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

Joint Custody of Dependents

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

When more than one applicant or assisted family (regardless of program) is 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 dependents can only be claimed by one family member.

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 income tax return showing which family has claimed the child for income tax purposes, school records, or other credible documentation.

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 determine if attendance is full-time is defined by the educational institution.

Identifying each FTS is important because (1) each family member that is an FTS, other than the head, spouse, or co-head, qualifies the family for a dependent deduction and (2) the income of such an FTS is treated differently from the income of other family members.

3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY *[24 CFR 5.100, 5.403, 945.105, and FR Notice 02/03/12]*

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, co-head, or sole member is an elderly person [24 CFR 5.403]. Identifying elderly families is important because these families qualify for the elderly family allowance and the medical allowance 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 co-head is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, 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 co-head 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 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)].

OHA Policy

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 45cumulative 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, who are not included as family members 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 Public Housing unit address as their residence address for receipt of benefits or any other purposes will be considered unauthorized occupants. In addition, guests who remain in the unit beyond the allowable time limit will be considered to be unauthorized occupants, and their presence constitutes violation of the lease.

3-I.K. FOSTER CHILDREN AND FOSTER ADULTS [24 CFR 5.603]

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

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

Foster children and foster adults who 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].

OHA Policy

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

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

3-I.L. ABSENT FAMILY MEMBERS

Individuals may be temporarily or permanently absent from the unit, for a variety of reasons including educational activities, placement in foster care, employment, illness, incarceration, court order and actual or threatened domestic violence, dating violence, sexual assault or stalking.

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.

Absences Due to Military Duty

A family member is temporarily absent from the unit if the family can return to the unit within 30 days of the conclusion of active duty services if not absent from the unit for more than 180 days. The remaining family members can remain in the unit by paying the required rent. If the length of service extends beyond 180 days, OHA will waive the 180 day limit subject to verification of the absence due to active duty service.

If a family member is activated by the Federal Government's activation of Reserve or National Guard personnel and as a result the family finds it necessary for another adult to temporarily move into a unit solely to serve as a temporary guardian for children residing in a unit, the presence of the temporary guardian must be approved by the landlord and the income received by the temporary guardian will not be counted in determining family income. If the temporary guardian is determined to be ineligible due to a criminal background, the family will be given 30 days to find a replacement temporary guardian.

Absent Head, Spouse, or Co-head

An employed head, spouse, or co-head 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 up to 180 days. 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 in this chapter.

Absence Due to Actual or Threatened Domestic Violence, Dating Violence, Sexual Assault or Stalking

Prior to determining that a family member or a family has abandoned the unit, OHA shall take into account the role of reported domestic violence, dating violence, sexual assault or stalking played in the absence.

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 support services [24 CFR 5.403].

OHA must approve a live-in aide if needed as a reasonable accommodation for a person with disabilities in accordance with 24 CFR 8.

OHA Policy

A relative may be approved as a live-in aide.

A live-in aide should:

- be capable of and qualified to provide the needed care;
- NOT had been part of the household while the family was receiving program assistance;
- maintain separate finances from the participant; and
- there is no other reason for the aide to reside in the unit other than to provide care for the person with disability.

If a family member requested to become a live-in aide and OHA has approved the request, the member loses their right to become a future household member, such determination is non-revocable. 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 as provided by the family, 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 support services.

A live-in aide would use the assisted unit as their primary residence, that is, one aide for around the clock care. Occasional, intermittent, multiple or rotating care-givers typically do not reside in the unit and would not qualify as live-in aides; therefore, an

additional bedroom will not be approved for a live-in aide under these circumstances. [[Notice PIH-2009-22]

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 OHA in connection with Section 8 or public housing assistance under the 1937 Act.

OHA will initially respond in writing to all requests for a live-in aide within **15** business days of receiving a request for a live-in aide.

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 the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

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 and Notice PIH 2023-27]

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

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

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

If admissions of extremely low-income families to OHA's housing choice voucher program during OHA's fiscal year exceed the 75 percent minimum targeting requirement for that program, such excess shall be credited against 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 total waiting lists admissions during OHA's fiscal year
- Ten percent of waiting list admission to OHA's housing choice voucher program during OHA's 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.

OHA Policy

Under MTW Authority, OHA is authorized to determine qualifications for participation in the rental assistance program that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations, as long as the requirements that: i) at least 75 percent of those assisted under the demonstrations are "very low-income" as defined in section 3(b)(2) of the 1937 Act, ii) substantially the same number of low-income persons are assisted under the demonstrations as would be without the MTW authorizations contained herein, and iii) a comparable mix of families are assisted under the Agreement as would have been otherwise in Section I.C. of the MTW Agreements are met. *This authorization waives certain provisions of Sections 16(b) and 8(o)(4) of the 1937 Act and 24 CFR 5.603, 5.609, 5.611, 5.628, and 982.201 as necessary to implement the Agency's Annual MTW Plan*

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 non-citizens who have eligible immigration status. At least one family member must be a citizen, national, or non-citizen 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 OHA's LEP , 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 non-citizen, 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 non-citizens. For citizens, nationals and eligible non-citizens the declaration must be signed personally by the head, spouse, co-head, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Non-citizens 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.

Eligible Non-citizens

In addition to providing a signed declaration, those declaring eligible non-citizen 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 non-citizen 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 ("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 the Marshall Islands, the Federated States of Micronesia, and Palau.

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Ineligible Non-citizens

Those non-citizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family members listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. 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 non-citizen students is prohibited [24 CFR 5.522]. This prohibition extends to the non-citizen spouse of a non-citizen student as well as to minor children who accompany, or follow to join, the non-citizen student. Such prohibition does not extend to the citizen spouse of a non-citizen student or to the children of the citizen spouse and non-citizen 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 non-citizen. 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 grievance 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 non-citizens, 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 a grievance hearing with OHA. The grievance 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 grievance hearing process.

Grievance procedures are contained in Chapter 14.

Time Frame 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, Notice PIH 2012-10 as amended by MTW]

All family members must provide documentation of a valid Social Security Number (SSN). 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 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.

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

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

HUD permits an exception if a child under the age of 6 years is added to the applicant household within the 6-month period prior to the household's date of admission, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 calendar days from the date of admission to the program.

HUD further regulates that OHA must grant an extension of one additional 90-day period if OHA determines that, in OHA's discretion, the applicant's failure to meet the first timeline was due to circumstances that could not reasonably be foreseen and were outside the control of the applicant. If the applicant family fails to provide the required documentation within required time period, OHA must deny eligibility of the applicant family

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 5.232]

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

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) and 24 CFR 5.232(a)].

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

OHA Policy

OHA may require each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign the HUD approved OHA Authorization Release Form/Privacy Act Notice form in lieu of the 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.

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

3-II.E. EIV SYSTEM SEARCHES [EIV FAQs; EIV System Training 9/30/20; and Notice PIH 2023-27]

Existing Tenant Search

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

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

OHA Policy

OHA will contact the other PHA or owner identified in the report to confirm that the family has moved out of the unit and obtain documentation of current tenancy status, including a form HUD-50058 or 50059, as applicable, showing an end of participation.

OHA will only approve assistance contingent upon the move-out from the currently occupied assisted unit.

Debts Owed to PHAs and Terminations

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

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

OHA Policy

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

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

Income and Income Validation Tool (IVT) Reports

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

PART III: DENIAL OF ADMISSION

3-III.A. OVERVIEW

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

In addition, HUD requires and permits OHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. OHA's authority in this area is limited by the Violence against Women Reauthorized Act of 2016 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005(b)]. OHA adheres to Federal, state and local regulations in determining criteria to deny assistance.

Oakland has a Fair Chance Housing Ordinance 13581- C.M.S, passed in early 2020, that limits the use of criminal history in tenant selection policies in order to give previously incarcerated persons or other persons with a criminal history a fair opportunity to compete for rental housing and to be able to reside with family members and others, thus putting them in a better position to reintegrate into the community and to obtain gainful employment.

The California Penal Code 11105.03 specifies what information can be released by local law enforcement agencies to housing authorities obtained through the California Law Enforcement Telecommunications System (CLETS) for the purpose of screening prospective participants and limits the information that can be provided regarding convictions of serious felonies and offenses defined in the specified code. In 2015, certain drug use offenses became misdemeanors under California Proposition 47 and as such are not reported to or used by housing authorities in the eligibility process.

Definitions:
"Criminal Background " means any report regarding an Applicant's Criminal History, including, but not limited to, those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement agencies, courts, or by any consumer reporting or tenant screening agency

"Conviction" means a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor or other criminal offense and for which the person was placed on probation, fined, imprisoned and/or paroled.

"Criminal History" means information transmitted orally or in writing or by any other means, and obtained from any source, including, but not limited to, the individual to whom the information pertains, a government agency or a Background Check Report, regarding: one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, sealed, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute (for example, under California Penal Code sections 1203.1 or 1203.4); a determination or adjudication in the juvenile justice system; a matter considered in or processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.

The term "Criminal Background Check" will encompass the terms criminal background, conviction and criminal history defined above related to denial decisions.

This part covers the following topics:

- Required denial of admission
- The asset limitation in public housing
- Other permitted reasons for denial of admission
- Screening
- Criteria for deciding to deny admission
- Prohibition against denial of admission to victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking
- Notice of eligibility or denial

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

OHA is required to establish standards that prohibit admission of an applicant to the public housing program if they have engaged in certain criminal activity or if 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 OHA prohibit admission for a prescribed period after some disqualifying behavior or event, HA may choose to continue that prohibition for a longer period [24 CFR 960.203(c)(3)(ii)].

OHA is required to perform criminal background checks necessary to determine whether any household member may be denied admission based on mandatory criteria as required by Federal regulations.

If OHA proposes to deny admission based on a criminal background check, OHA must notify the household of the proposed action and must provide the subject a copy/summary of the criminal background information 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)].

OHA will comply with any documentation and notice requirements of the Oakland Fair Chance Housing Ordinance 13581- C.M.S except conditional rental agreements, to the extent such compliance does not conflict with applicable Federal law.

Under Federal Regulations as specified in 24 CFR Part 960 OHA must deny admission based on the following criteria which applies to any applicant household member:

1) 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)].
2) Convicted of drug-related criminal activity for methamphetamine production in Federally Assisted Housing [24 CFR 960.204(a)(3)].

OHA Policy

OHA will deny admission based on mandatory criteria specified in Federal regulations.

3-III.C. RESTRICTION ON ASSSITANCE BASED ON ASSETS [24 CFR 5.618]

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

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

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

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

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

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

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

- Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
- Is not sufficient for the size of the family;

  OHA Policy

  OHA defines *not sufficient for the size of the family* as being overcrowded based on OHA's occupancy standards in Chapter 5.
- Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by OHA or the owner);
- Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
- Is not a property that a family may reside in under the State or local laws of the jurisdiction where the property is located.

3-III.D. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION

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

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

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. OHA's adverse housing decisions based upon criminal activity must be supported by sufficient evidence that the individual engaged in such activity.

OHA Policy

OHA will deny admission based on mandatory criteria specified in Federal regulations.

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

HUD authorizes OHA 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). As discussed in Section 3-III.F OHA may need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, sexual assault, or stalking, as .VAWA related disturbances or destruction of property may not be used to deny admission.

OHA Policy

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

- Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past five years
- Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past five years which may adversely affect the health, safety, or welfare of other tenants
- Has a pattern of eviction from housing or termination from residential programs within the past five years (considering relevant circumstances)
- 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 PHA personnel
  Abusive or violent behavior towards PHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other

language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

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

- Owes rent or other amounts to this or any other PHA or owner in connection with any assisted housing program

OHA Policy

If determined during the verification process that any member of the applicant's family owes a debt to any PHA, the applicant will be given 30 days to repay the debt in full unless the PHA to which the debt is owed authorizes a longer repayment period. OHA may continue verification of an applicant's eligibility, but will not allow the applicant to lease an available unit until the debt has been repaid in full and the applicant determined to be eligible for leasing. The applicant's assistance will be denied if the applicant fails to repay the debt in full before the 30-day period expires (or an extended period up to 90 days authorized by the debt owed to the PHA and OHA).

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.E. SCREENING

Screening for Eligibility

OHA is authorized to obtain criminal background check records from law enforcement agencies, FBI channelers, and certified criminal search vendors to screen applicants for admission to the public housing program. This authority assists OHA in complying with Federal, state and local 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 Policy

OHA uses its own accredited police department to perform the majority of criminal background, conviction and criminal history checks and may use a third-party vendor. OHA will perform criminal background checks for all adult household members. Information may be obtained from any combination of qualified sources or their successors in interest including, but not limited to the California Law Enforcement Telecommunications System (CLETS) or the National Crime Information Center (NCIC).

OHA will :

1) Inform the applicant in advance that OHA will check for certain types of criminal history that require mandatory denial under Federal law
2) Request written consent to perform a criminal background check and if the applicant objects, allow the applicant to withdraw the application for housing assistance
3) Disclose the Federal criteria for mandatory denial

OHA will provide the following documentation:

1) City notice on ordinance to applicants in application materials, intake packets, websites and locations frequented by public
2) Maintain criminal background check records for at least 3 years as confidential records only for applicants that are denied admission
3) If requested, provide records to City to demonstrate compliance
4) Submit an annual certificate of compliance to the City in the form provided

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)].

Additionally, OHA must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state [Notice PIH 2012-28].

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 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 to ensure that assisted housing is provided to those families that will adhere to lease obligations.

OHA Policy

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
- Drug related criminal activity or other 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]

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

OHA Policy

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

OHA 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 OHA/landlord ever began or completed lease termination for non-payment, and whether utilities were ever disconnected in the unit. OHA 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 their 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.

OHA 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. While OHA not base a determination that an applicant or household engaged in criminal activity warranting denial, termination, or eviction on an arrest record, it may use an arrest to trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity.

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 their 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 their designee to ensure that any actions or decisions taken within the his 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 benefits nor receive any gain of benefits as a result, direct or indirect, of their employment at OHA or their relationship to an OHA employee. As such:

- 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.

- 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.

3-III.F. 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. In the case of mandatory denial, OHA will use criminal background check information from authorized sources.

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 OHA 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 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 Policy

OHA may consider the following circumstances when making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents' safety or property
- The effects that denial of admission may have on other members of the family who were not involved in the action or failure to act;
- The effects that denial of admission may have on other members of the family who were not involved in the action or failure;
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.G) a victim of domestic violence, dating violence, sexual assault or stalking;
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future;
- While OHA not base a determination that an applicant or household engaged in criminal activity warranting denial, termination, or eviction on an arrest record, it may use an arrest to trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity.
- As part of its investigation, OHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest.

- OHA may also consider any statements made by witnesses or the applicant not included in the police report
- Whether criminal charges were filed
- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
- Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity

- Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property
- Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs; and
- 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 OHA 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 applicant family includes a person with disabilities, OHA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

If the applicant 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.G. 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 OHA determines that an applicant family is not eligible for the program for any reason, the applicant must be notified promptly. The notice must describe (1) the reasons for which assistance has been denied (2) the applicant's right to an informal review, (3) the process for obtaining the informal review [24 CFR 982.554 (a)] and (4) the protections discussed in section 3-III.G. See Chapter 14 for informal review policies.

If OHA uses a criminal background check or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a proposed denial, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The subject of the record will be given the opportunity to dispute the accuracy and relevance of the information provided during the informal review process in accordance with program requirements [24 CFR 982.553(d)] before OHA can issue the notice of final denial of the application. OHA notification of proposed denial will include a reminder of the family's right to bring counsel and referral information for local legal services organizations.

OHA will comply with the Fair Chance Housing Ordinance in terms of notification to the applicant if there is a denial related to criminal background information.

OHA Policy

If, an applicant appears to be ineligible based on general suitability, a criminal background check, or sex offender registration information; OHA will notify the applicant in writing of the proposed denial and provide the applicant with a copy/summary of the criminal background information when the denial is due to failed criminal screening. The applicant will be given 10 business days to dispute the accuracy and relevance of the information by requesting an informal review. If the applicant does not contact OHA to request an informal review within 10 business days, OHA will proceed with issuing the notice of final denial of admission.

OHA notification of proposed denial will include a reminder of the family's right to bring counsel and to referral information for local legal services organizations.

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

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

3-III.H. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING [24 CFR Part 5, Subpart L]

The Violence Against Women Act (VAWA) and the HUD regulations at 24 CFR 5.2005(b) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking. [24 CFR 5.2005].

Definitions of key terms used in VAWA are provided in Section 16-VII of this plan, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

Notification and Victim Documentation

VAWA expanded notification requirements to include the obligation for OHA to provide applicants who are denied assistance with a notice of VAWA rights and the form HUD-5382 at the time the applicant is denied.

OHA Policy

OHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history that would warrant denial under OHA's policies. Therefore, if OHA makes a determination to deny admission to an applicant family, OHA will include in its notice of denial a statement of the protection against denial provided by VAWA, a notice of VAWA rights and a copy of the form HUD-5382. OHA will offer the applicant the opportunity to provide a statement or documentation affirming that domestic violence, dating violence, sexual assault, or stalking played a role in causing the basis for ineligibility. In accordance with 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.

An individual may satisfy the documentation request in any of the following ways:

1. Completing a HUD-approved certification form (such as Form HUD-5382 or signed statement verifying that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking, and that the incident or incidents in question are bona fide incidents of actual or threatened abuse. OHA will work with the victim to ensure that delivery of the certification form does not endanger the victim's safety. OR

2. Providing the requesting owner, manager, or OHA with documentation signed by any of the following third parties: (a) an employee, agent, or volunteer of a victim service provider; (b) an attorney; (c) a medical professional; or (d) other knowledgeable professional. The person signing the documentation must have assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of the abuse. The person signing the documentation must attest under penalty of perjury to his or her belief that the incident or incidents in question are bona fide incidents of abuse. The victim of domestic violence, dating violence, sexual assault, or stalking must also sign the documentation. or

3. Producing a Federal, State, tribal, territorial, or local law enforcement, court, or administrative record.

The applicant may submit the requested documentation with her or his request for an informal review (see section 16-III.D) or request an extension in writing at that time. If the applicant so requests, OHA will grant an extension of 10 business days, and will postpone scheduling the applicant's informal review until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant OHA determines the family is eligible for assistance, no

informal review will be scheduled and OHA will proceed with admission of the applicant family.

Nothing in this Policy shall be construed to require OHA to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, sexual assault or stalking in order to receive any of the benefits provided in this section. OHA may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.(24 CFR 5.2007)

Perpetrator Removal or Documentation of Rehabilitation

OHA Policy

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

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

OHA Confidentiality Requirements

If because of safety concerns a victim of domestic violence, dating violence, sexual assault, or stalking is unwilling or unable to provide information or identification ordinarily required to confirm eligibility, efforts will be made to otherwise establish eligibility and alternative sources and methods of verification will be accepted.

All information provided to OHA regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of such violence assault or stalking, must be retained in confidence and may neither be entered into any shared database nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law. If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, OHA will inform the victim before disclosure occurs so that safety risks can be identified. If disclosure of the information would place the victim's safety at risk, OHA will work with the victim to determine whether there are alternatives to disclosure.

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, or

  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 follows:

  (A) In General

  The term "developmental disability" means a severe, chronic disability of a person that:

  - 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: (1) self-care; (2) receptive and responsive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) 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.

  (B) Infants and Young Children

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

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

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

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

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

Individual with Handicaps [24 CFR 8.3]

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

(1) Physical or mental impairment includes:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine

(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

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CHAPTER 4

APPLICATIONS, SITE-BASED WAITING LISTS AND TENANT SELECTION

INTRODUCTION

OHA has organized its Public Housing units into a portfolio; and manages an individual site-based waiting list for each site. When a family wishes to reside in a particular public housing site, the family must submit a pre-application for that site-based waiting list at the time the site-based waiting list is open. Site-based waiting lists will be established based on Section 4-II.C. Opening and Closing the Site-based Waiting Lists. The pre-application provides OHA with the information needed to determine the family's initial eligibility for the site-based waiting list. When a unit becomes available, OHA must select families from the site-based waiting lists in accordance with HUD requirements, OHA policies, the ACOP and its MTW Annual Plan.

OHA is required to adopt a clear approach to accepting applications, placing families on the site-based waiting lists, selecting families from the site-based waiting lists, and following this approach consistently. The actual order in which families are selected from the site-based waiting lists 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 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 OHA complies with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and OHA policies for accepting applications, managing the site-based waiting lists and selecting families from the site-based waiting lists. 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 Site-based Waiting Lists. This part presents the policies that govern how OHA's site-based waiting lists are structured, when they are opened and closed, and how the public is notified of the opportunity to apply for public housing. It also discusses the process OHA will use to keep the site-based waiting lists 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 site-based waiting lists. 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. However, OHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of OHA's application [Notice PIH 2009-36].

A two-step process will be used to accept applications. Under the two-step application process. OHA will require families to submit the pre- application and provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the site-based waiting lists. 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 site-based 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 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 Population [24 CFR 8; PH Occ GB, p. 68]

OHA must provide reasonable accommodation as needed for persons with disabilities to make the application process fully accessible. The facility where applications are accepted 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

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

4-I.D. PLACEMENT ON THE SITE-BASED WAITING LIST

OHA must review each completed pre-application received and make a preliminary assessment of the family's eligibility. Applicants for whom the waiting list is open must be placed on the waiting list 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].

No applicant has a right or entitlement to be listed on the site-based waiting lists, or to any particular position on the site-based waiting lists.

Method OHA will use for Placing Apparently Eligible Families on the Waiting List

OHA will use a lottery system to select and place families on the waiting list. Applications will be accepted for a designated period of time as specified in the announcement notice. OHA will take applications that are submitted and randomly assigned a lottery number to each application. The number of families selected will vary according to the number of voucher/units available. OHA may also open the wait list on a continuous basis. In that case, applications received will be accepted continuously and then date and time stamped. These applications may also have a lottery number randomly assigned. Families not selected by the lottery for placement on the waiting list, will be notified within 120 calendar days of receiving a completed application

Ineligible for Placement on the Waiting List

If OHA determines from the information provided that a family is ineligible, the family will not be placed on the site-based waiting list. When a family is determined to be ineligible, OHA will send written notification of the ineligibility determination within 120 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 Site-Based Waiting List

OHA will send written notification of the preliminary eligibility determination within 120 calendar days of receiving a completed application. If applicable, the notice will also indicate the site-based waiting list preference(s) for which the family appears to qualify.

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

OHA will assign families on the Public Housing site-based waiting lists according to the bedroom size for which a family qualifies as established in the occupancy standards (see Chapter 5). Families may request to be placed on the site-based waiting list for a unit size smaller than the size 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.

Placement on the site-based waiting list(s) does not indicate that the family is, in fact, eligible for admission. When the family is selected from the waiting list, OHA will verify any preference(s) claimed and determine eligibility and suitability for admission to the program.

PART II: MANAGING THE SITE-BASED WAITING LIST

4-II.A. OVERVIEW

OHA must have policies regarding the type of site-based waiting lists it will use, how it will be organized and managed. This includes policies on notifying the public on the opening and closing of the site-based waiting list to new applicants, updating family 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 site-based waiting lists and how families must be treated if they apply for Public Housing since OHA administers more than one assisted housing program. Public Housing applicants must have an opportunity to apply and be considered for OHA's Housing Choice Voucher and Project Based Voucher waiting lists, if the waiting lists are open.

Under MTW authority, OHA is authorized to determine waiting list procedures, tenant selection procedures and criteria, and preferences, including authorizing vouchers for relocation of witnesses and victims of crime that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. ***This authorization waives certain provisions of Sections 6(r) of the 1937 Act and 24 C>F.R. 903.7 as necessary to implement the Agency's Annual MTW Plan.***

4-II.B. ORGANIZATION OF THE SITE-BASED WAITING LISTS

OHA's public housing site-based waiting lists 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 site based waiting lists 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 site-based 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 site-based waiting lists for each of its public housing sites.

HUD directs that a family that applies to reside in public housing must be given an opportunity to apply and be considered for placement 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 OHA maintain a single merged waiting list for their public housing, Housing Choice Voucher, and other subsidized housing programs [24 CFR 982.205(a)(1)].

OHA Policy
OHA will not merge the site-based public housing waiting lists into one centralized waiting list nor will OHA merge the site-based public housing waiting list with the waiting list for any other program OHA operates.

4-II.C. OPENING AND CLOSING THE SITE-BASED WAITING LIST

Closing the Site-Based Waiting List

OHA is permitted to close the site-based waiting list, in whole or in part, if it has an adequate pool of families to fully lease un 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 announcing the opening of the waiting lists in local newspapers of general circulation, media that target LEP's, and other suitable media outlets. Such notice must comply with HUD fair housing requirements. OHA will 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 OHA website at 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 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 OHA to admit 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 in 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 OHA to establish policies that describe the circumstances under which applicants will be removed from the waiting list [24 CFR 960.202(a)(2)(iv)].

Purging the Waiting List

The decision to remove 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 years to ensure that all 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 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, an informal hearing will not 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 or his designee may reinstate the family if she or he determines the lack of response was due to OHA error or to circumstances beyond the family's control.

Removal from the Waiting List

OHA will remove an applicant from the waiting list upon request by the applicant family. In such cases no informal hearing is required.

If 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 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 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)]. 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. The order may be affected, in part, by any selection preferences for which the family qualifies. 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.

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

4-III.B. SELECTION METHOD

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

Under MTW authority, OHA is authorized to determine waiting list procedures, tenant selection procedures and criteria and preferences, including authorizing vouchers for relocation of witnesses and victims of crime that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. ***This authorization waives certain provisions of Sections 8(o)(6), 8(o)(13)(J) and 8(o)(16) of the 1937 Act and 24 CFR 982 Subpart E, 982.305 and 983 Subpart F as necessary to implement the Agency's Annual MTW Plan.***

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 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)].

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

- A Veterans Preference (as required by state law);
- A Residency Preference (for persons living or working in Oakland)
- A Family Preference for applicant families with two or more persons, a single person applicant that is 62 years of age or older, or a single person applicant with a disability.
- A family preference for applicant families that are homeless at admission based on the McKinney Vento Act definition

  Applicants to the public housing conventional program, within the above preferences, will be selected from the waiting list in the order of their assigned lottery number and according to OHA preference(s) for which they qualify. Among applicants with the same preference, families will be selected according to a random selection process.

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 OHA also operates a housing choice voucher ("HCV") program, admissions of extremely low- income families to OHA's HCV program during a OHA fiscal year that exceed the 75% minimum target requirement for the voucher program shall be credited against OHA'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 OHA fiscal year; (2) ten percent of waiting list admissions to OHA's housing choice voucher program during OHA's fiscal year; or (3) the number of qualifying low-income families who commence occupancy during the fiscal year of OHA 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 or Disabled Families [24 CFR 945]

OHA has designated the following development projects designated 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
- Lakeside Senior

Among the designated developments, OHA must also apply any preferences that it has established.

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 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 OHA with fewer than 100 public housing units; mixed population or developments designated specifically for elderly or disabled families; developments operated by a OHA 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 OHA 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 Policy

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 Policy

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 (federal poverty level or 30% of median income, whichever is higher).

Step 4. With covered developments having average incomes outside the EIR, OHA 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 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 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 three general occupancy (family) public housing developments covered by the deconcentration rule. None of these covered developments has average incomes above or below 85% to 115% of the average incomes of all such developments. OHA 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. The Executive Director or designee may elect to select applicants from other program waitlists when the public housing site-based waitlist has been fully exhausted resulting in vacancies.

All OHA programs may offer assistance to other program applicants when the waitlist for a specific program is exhausted.

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

1) When selecting applicants from the site-based waiting lists, OHA will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the site-based 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.
2) By matching unit and family characteristics, it is possible that families who are lower on the site-based waiting list may receive an offer of housing ahead of families with an earlier date and time of application or higher preference status.
3) 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. (Refer to 4-II.F. Updating the Waiting List)

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 non-citizen 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 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 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 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 OHA can move to deny the application. See Section 3-III.F. for OHA's policy regarding such circumstances.

Upon making an eligibility determination, OHA must provide the family a notice of VAWA rights as well as the HUD VAWA self-certification form (form HUD-50066) in accordance with the Violence against Women Act, and as outlined in 16-VII.C. The notice and self-certification

form must accompany the written notification of eligibility determination. This notice must be provided in both of the following instances: (1) when a family is notified of its eligibility; or (2) when a family is notified of its ineligibility.

CHAPTER 5

OCCUPANCY STANDARDS AND UNIT OFFERS

INTRODUCTION

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 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, compositions, 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 underuse or excessive wear and tear due to overcrowding. . 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. OHA is permitted to develop appropriate occupancy standards as long as the standards do not have the effect of discriminating against families with children [PH Occ GB, p. 62]. Although 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 will be applied in a manner consistent with fair housing requirements.

OHA will use the same occupancy standards for each of the AMP developments. OHA occupancy standards are as follows:

- OHA will assign one bedroom for each two persons within the household, except in the following circumstances:
  - The Head of Household, if single, will be assigned their own bedroom and then one bedroom will be assigned for each remaining two persons within the household.
- 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 assign bedroom sizes using the maximum number of persons for that unit bedroom size. However, OHA may assign bedroom sizes by the minimum standards to prevent vacancies.
OHA will reference the following standards in determining the appropriate unit bedroom size for a family:

BEDROOM SIZE	MINIMUM NUMBER OF PERSONS	MAXIMUM NUMBER OF PERSONS
0	1	1
1	1	3
2	2	5
3	4	7
4	6	9

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 in writing 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 site-based waiting lists. 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 units are available within each AMP of suitable size and type.. Applicants will be offered at least 2 units based on the distribution of vacancies within the AMP. If a suitable unit is available in two (2) locations within the AMP, the applicant will be offered two suitable units. The offers will be made in sequence and the applicant must refuse the first offer in writing before a second offer is made. If the applicant refuses at least two unit offers at the same AMP the applicant will be withdrawn from that site-based waiting list.

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

Applicants from each site-based waiting list 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].

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

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, or documentation of domestic violence, dating violence, stalking, or sexual assault in accordance with. 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
- Safety for VAWA survivors, as the VAWA survivor determines whether a unit is deemed safe, and there is no limit to the number of units survivors may reject for safety reasons.

In the case of 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 site-based 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 site-based 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 when the site-based waiting list is opened. If the site-based waiting list is not open, the applicant must wait to reapply until OHA opens the site-based waiting list.

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

OHA 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 AMP or other public housing AMP 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 sign an agreement that will be e incorporated as a lease addendum before moving in to an -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

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 which are excluded from the family's annual income. These requirements and OHA policies for calculating annual income are found in Part I.

Part II: Assets. HUD regulations specify the types of assets which are excluded from a family's annual income. These requirements and OHA policies for calculating income from assets are found in Part II.

Part III: 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 and allows OHA to adopt additional permissive deductions. These requirements and OHA policies for calculating adjusted income are found in Part III.

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

Under MTW Authority, OHA is authorized to adopt and implement any reasonable policy to establish payments, rents or subsidy levels from tenant-based assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. OHA is authorized to adopt and implement any reasonable policies to calculate the tenant portion of rent that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. ***This authorization waives certain provisions of Section 3(a)(2), 3(a)(3)(A) and Section 6(l) of the 1937 Act and 24 CFR 5.603, 5.611, 5.628, 5.630, 5.632, 5.634 and 960.255 and 966 Subpart A, as necessary to implement the Agency's Annual MTW Plan***

PART I: ANNUAL INCOME

6-I.A. OVERVIEW[24 CFR 5.609]

Annual income includes:

- All amounts, not specifically excluded in 24 CFR 5.609(b);
- All amounts received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse;
- Unearned income by or on behalf of each dependent who is under 18 years of age; and
- Imputed returns of an asset based on the current passbook savings rate, as determined by HUD, when the value of net family assets exceeds $50,000 (which amount HUD will adjust annually) and the actual returns from a given asset cannot be calculated.

In addition to this general definition, the regulations at 24 CFR 5.609(b) provide a comprehensive listing of all sources of income that are excluded from annual income. Note, unlike in previous version of the regulations, the current regulations governing annual income do not list sources of income that are to be included. Instead, HUD relies on the definition of excluded income under 24 CFR 5.609(b) to provide the scope of what is included. To that end, generally, all income is included unless it is specifically excluded by regulation.

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but did not receive. For example, a family's child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [Notice PIH 2023-27].

Annual income also includes all actual anticipated income from assets (provided the income is not otherwise excluded) even if the asset itself is excluded from net family assets [Notice PIH 2023-27]. 24 CFR 5.603(b)(1) describes HUD regulations for treating specific types of assets.

The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Full Definition (Exhibit 6-1)
- Treatment of Family Assets (Exhibit 6-2)
- The Effect of Welfare Benefit Reduction (Exhibit 6-3)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. Verification requirements for annual income are discussed in Chapter 7.

Under MTW authority, OHA may provide elderly and disabled families with an option to have their income calculated every three years with a fixed annual cost of living increase or decrease in rent based on the annual cost of living increase for Social Security.

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6-I.B. HOUSEHOLD COMPOSITION AND INCOME

Overview

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition in accordance with HUD regulations and OHA policies in Chapter 9. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster child or foster adult	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Head, spouse, or co-head Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Earned income of children under 18 years of age is excluded [24 CFR 5.609(b)(3)]. All other sources of income, except those specifically excluded by the regulations, are included. All other sources of unearned income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or co-head)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(3)]. All other sources of unearned income, except those specifically excluded by the regulations, are included.

Temporarily Absent Family Members

The current regulations governing annual income do not specifically address temporarily absent family members. The regulations also do not define “temporarily” or “permanently” absent or specify a timeframe associated with a temporary versus a permanent absence.

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.

OHA Policy

Unless specifically excluded by the regulations, the income of all family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit.

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

Absent Students

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 (as confirmed by the state child welfare agency) are considered members of the family [24 CFR 5.403].

OHA Policy

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 continue to be counted as a family member.

Absent Head or Co-head

An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member. (Refer to Chapter 3)

Absences Due to Military Duty

A family member is temporarily absent from the unit if the family can return to the unit within 30 days of the conclusion of active duty services and if not absent from the unit for more than 180 days. The remaining family members can remain in the unit by paying the required rent. If the length of service extends beyond 180 days, OHA may waive the 180 day limit subject to verification of the absence due to active duty service

Family Members Confined for Medical Reasons

If a family member is confined to a nursing home or hospital on a permanent basis, PHAs may determine that that person is no longer a member of the assisted household, and the income of that person is not counted [New PH OCC GB, *Income Determinations,* p. 12].

OHA Policy

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.

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

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 more than 50 percent 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 physical 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

Upon notification or determination that neither a parent nor a designated guardian remains in a household receiving assistance, OHA will take the following actions.

Caretaker will not apply for eligibility

- The caretaker will notify OHA in writing of their decision to remove the child from the unit and will not request to apply for eligibility as program participant HOH. The family will receive 30 days' notice of program termination and the owner will receive 30 days' notice of contract cancellation.
- The caretaker will notify OHA in writing that they will remain in the unit; however, they will not request to apply for eligibility as program participant HOH. The family will receive 30 days' notice of program termination and the owner will receive 30 days' notice of contract cancellation.

Caretaker to apply for eligibility while living in unit

- 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 an authorized visitor for 90 days; and will be required to sign the *Use of Space License Agreement*.

- During the initial 30-day period, the caretaker must pass OHA criminal activity and suitability screening and the caretaker must initiate formal custody or legal guardianship with a responsible agency and provide documentation to OHA. If after 90 days has lapsed and the caretaker has not initiated the process to obtain formal custody or legal guardianship, OHA will proceed with action to recover the unit.

- If formal custody or legal guardianship is awarded to a caretaker, the caretaker will be required to sign the lease as head of household (subject to the caretaker meeting all OHA eligibility admissions criteria for Public Housing Program participation.)

- Only a head of household will be added to the household subsidy size cannot be increased. If the new HOH has additional family members, the mixed family proration will be used to calculate the subsidy. The new members are considered ineligible based on the Caretaker for a Child Rule Only.

- The head of household will no longer qualify for program participation if the minor is no longer a member of the 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.
- OHA may extend the caretaker’s status as an eligible visitor up to 180 days..
- Caretakers will be required to sign a document acknowledging that the caretaker is not a party to the lease nor entitled to OHA assistance. The caretaker is only approved to live in the unit while serving as the caretaker for the participant minor children. The caretaker will be required to comply with all house rules.

- If a caretaker is deemed ineligible to become a family member;. OHA will send notice to the applicant caretaker/visitor of denial. The notice will inform the caretaker/visitor of their right to request an Informal Hearing and how to request an Informal Hearing. (See Chapter 14).

6-I.C. CALCULATING ANNUAL INCOME

The methodology used for calculating income differs depending on whether income is being calculated at initial occupancy, interim reexamination, or at annual reexamination. However, income from assets is always anticipated regardless of certification type.

Anticipating Annual Income [24 CFR 5.609(c)(1)]

At initial occupancy and for an interim reexamination of family income, OHA is required to use anticipated income (current income) for the upcoming 12-month period following the new admission or interim reexamination effective date.

OHA Policy

When OHA cannot readily anticipate income based upon current circumstances (e.g., in the case of temporary, sporadic, or variable employment, seasonal employment, unstable working hours, or suspected fraud), 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.

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

In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how OHA annualized projected income.

Known Changes in Income

If OHA verifies an upcoming increase or decrease in income, annual income willbe projected by applying each income amount to the appropriate part of the 12- month period.

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

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases, OHA will calculate annual income using current circumstances and then, should the change in income require OHA to conduct an interim reexamination, conduct an interim reexamination in accordance with OHA policy in Chapter 9..

Calculating Annual Income at Annual Reexamination [24 CFR.609(c)(2); Notice PIH 2023-27]

At annual reexamination, OHA must first determine the family's income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with OHA policies in Chapter 9 and HUD regulations, must be considered. If, however, there have been no changes to income, then the amount of income calculated for the previous 12-month period is the amount that will be used to determine the family's rent. Income from assets is always anticipated, irrespective of the income examination type. Policies related to conducting annual reexaminations are located in Chapter 9.

6-I.D. EARNED INCOME

Wages and Related **Compensation** *[24 CFR 5.609(a); Notice PIH 2023-27]*

The earned income of each member of the family who is 18 years of age or older, or who is the head of household or spouse/cohead regardless of age, is included in annual income. Income received as a day laborer or seasonal worker is also included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

Earned income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits [24 CFR 5.100].

A *day laborer* is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future [24 CFR 5.603(b)].

A *seasonal worker* is defined as an individual who is hired into a short-term position(e.g., for which the customary employment period for the position is six months or fewer) and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry [24 CFR 5.603(b)]. Some examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard, ballpark vendor, or snowplow driver [Notice PIH 2023-27].

OHA Policy

OHA will include in annual income the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation.

For persons who regularly receive bonuses or commissions, 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.

Military Pay

All regular pay, special pay and allowances of a member of the Armed Forces are counted except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].

Earnings of a Minor **[24 CFR 5.609(c)(1)]**

A *minor* is a member of the family, other than the head of household or spouse, who is under 18 years of age. Employment income earned by minors is not included in annual income. All

other sources of unearned income, except those specifically excluded by the regulations, are included.

Earned Income of Full-Time Students

The earned income of a dependent full-time student in excess of the amount of the dependent deduction is excluded from annual income. All sources of unearned income, except those specifically excluded by the regulations, are included.

A family member other than the head of household or spouse/cohead is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.603(b)]. Full-time status is defined by the educational or vocational institution the student is attending [New PH OCC GB, Lease Requirements, p. 5].

6-I.E. EARNED INCOME DISALLOWANCE [24 CFR 960.255; Streamlining Final Rule (SFR) Federal Register 3/8/16; Notice PIH 2023-27]

HOTMA removed the statutory authority for the EID. The EID is available only to families that are eligible for and participating on the program as of December 31, 2023, or before; no new families may be added on or after January 1, 2024. If a family is receiving the EID prior to or on the effective date of December 31, 2023, they are entitled to the full amount of the benefit for a full 24-month period. The policies below are applicable only to such families. No family will still be receiving the EID after December 31, 2025. The EID will sunset on January 1, 2026, and the OHA policies below will no longer be applicable as of that date or when the last qualifying family exhausts their exclusion period, whichever is sooner.

Calculation of the Disallowance

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "baseline income." The family member's baseline income is his or her income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that he or she is participating in the EID.

Calculation Method

Initial 12-Month Exclusion

During the initial exclusion period of 12 consecutive months, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded.

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

During the second exclusion period of 12 consecutive months, OHA must exclude at least 50 percent of any increase in income attributable to employment or increased earnings.

OHA Policy
During the second 12-month exclusion period, OHA will exclude 100 percent of any increase in income attributable to new employment or increased earnings.

Lifetime Limitation

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 consecutive 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 HCV assistance, or if there are breaks in assistance. The EID will sunset on January 1, 2026. In no circumstances will a family member's exclusion period continue past January 1, 2026.

Individual Savings Accounts [24 CFR 960.255(d)]

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

6-I.F. BUSINESS AND SELF-EMPLOYMENT INCOME [24 CFR 5.609(b)(8); Notice PIH 2023-27]

Annual income includes "the net income from the operation of a business or profession. *Net income* is gross income minus business expenses that allows the business to operate. *Gross income* is all income amounts received into the business, prior to the deduction of business expenses.

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

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 herein.

Independent Contractors

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 2.609 (b)(24)].
An *independent contractor* is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In

general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b)].

Business Expansion
HUD regulations do not permit OHA 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. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9)]

The regulations distinguish between two categories of student financial assistance paid to both full-time and part-time students.

Types of Assistance

Any assistance to students under section 479B of the Higher Education Act of 1965 (Tile IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Examples of assistance under title IV of the HEA include:

- Federal Pell Grants;
- Teach Grants;
- Federal Work Study Programs;
- Federal Perkins Loans;
- Income earned in employment and training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA); or
- Bureau of Indian Affairs/Education student assistance programs
    - The Higher Education Tribal Grant
    - The Tribally Controlled Colleges or Universities Grant Program

Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the Federally mandated income exclusions are excluded [24 CFR 5.609(b)(9)(ii)]. *Actual covered costs* are defined as the actual costs of:

- Tuition, books, and supplies;
    - Including supplies and equipment to support students with learning disabilities or other disabilities
- Room and board; and
- Other fees required and charged to a student by the education institution.

For a student who is not the head of household or spouse/cohead, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Further, to qualify, other student financial assistance must be expressly:

- For tuition, book, supplies, room and board, or other fees required and charged to the student by the education institution;
- To assist a student with the costs of higher education; or
- To assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

The student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. However, any student financial assistance paid to the student must be verified by OHA.

The financial assistance must be a grant or scholarship received from:

- The Federal government;
- A state, tribal, or local government;
- A private foundation registered as a nonprofit;
- A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- An institution of higher education.

Student financial assistance, does not include:

- Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA);
- Gifts, including gifts from family or friends; or
- Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

Calculating Income from Student Financial Assistance [HOTMA Student Financial Assistance Resource Sheet; Notice PIH 2023-27]

The formula for calculating the amount of other student financial assistance that is excluded from income always begins with deducting the assistance received under 479B of the HEA from the total actual covered costs, because the 479B assistance is intended to pay the student's actual covered costs. When a student receives assistance from both Title IV of the HEA and from other sources, the assistance received under Title IV of the HEA must be applied to the student's actual covered costs first and then other student financial assistance is applied to any remaining actual covered costs. Once actual costs are covered, any remaining student financial assistance is considered income.

OHA Policy

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance, OHA will exclude the full amount of the assistance received under Title IV from the family's annual income. OHA will not calculate actual covered costs in this case.

If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source, OHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). OHA will then subtract the total amount of the student's financial assistance from the student's actual covered costs. OHA will include any amount of financial assistance in excess of the student's actual covered costs in the family's annual income.

Example 1

- Actual covered costs: $20,000
- Other student financial assistance: $25,000
- Excluded income: $20,000 ($25,000 in financial assistance - $20,000 in actual covered costs)
- Included income: $5,000

When a student receives assistance from both Title IV of the HEA and from other sources, OHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The assistance received under Title IV of the HEA will be applied to the student's actual covered costs first and then the other student financial assistance will be applied to any remaining actual covered costs.
If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the assistance included under other student financial assistance" would be excluded from income.

Example 2

- Actual covered costs: $25,000
- Title IV HEA assistance: $26,000
- Title IV HEA assistance covers the students entire actual covered costs.
- Other Student Financial Assistance: $5,000
- Excluded income: The entire Title IV HEA assistance of $26,000
- Included income: All other financial assistance of $5,000

If the amount of assistance excluded under Title IV of the HEA is less than the actual covered costs, OHA will exclude the amount of other student financial assistance up to the amount of the remaining actual covered costs.

Example 3

- Actual covered costs: $22,000
- Title IV HEA assistance: $15,000
- The remaining amount not covered by Title IV HEA assistance is $7,000 ($22,000 in actual covered costs - $15,000 in Title IV HEA assistance).
- Other Student Financial Assistance: $5,000
- $7,000 in remaining actual covered costs - $5,000 in other financial assistance
- Excluded income: $15,000 entire amount of the Title IV HEA Assistance + $5,000 in other financial assistance
- Included income: $0

Example 4

- Actual covered costs: $18,000
- Title IV HEA Assistance: $15,000
- The remaining amount not covered by Title IV HEA assistance is $3,000 ($18,000 in actual covered costs - $15,000 in Title IV HEA Assistance)
- Other student Financial Assistance: $5,000
- When other student financial assistance is applied, financial assistance exceeds actual covered costs by $2,000 ($3,000 in actual covered costs - $5,000 in other financial assistance).
- Included income: $2,000 (the amount by which the financial aid exceeds the student's actual covered costs).

6-I.H. PERIODIC PAYMENTS [Notice PIH 2023-27]

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

Income that has a discrete end date and will not be repeated beyond the coming year is excluded from a family's annual income because it is nonrecurring income. However, this does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended. For example, a family receives income from a guaranteed income program in their city that has a discrete beginning and end date. While the guaranteed income will be repeated in the coming year, it will end before the family's next annual reexamination. This income is fully excluded from annual income.

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income. Payments received in lieu of wages for worker's compensation are excluded, even if paid in periodic payments, if the income will last for a period of less than one year.

Lump-Sum Payments for the Delayed Start of a Periodic Payment [24 CFR 5.609(b)(16)]

Deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts are excluded from annual income.

OHA Policy

Deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts are excluded from annual income.

When a delayed-start payment is received that is to be included and the family reports this 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.

If the delayed-start payment is received outside of the time OHA is processing an annual reexamination, then OHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, OHA will conduct an interim in accordance with OHA policies in

Chapter 9. If not, OHA will consider the amount when processing the family's next annual recertification.

Retirement Accounts [24 CFR 5.609(b)(26); Notice PIH 2023-27]
Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals is not considered actual income from assets.

However, any distribution of periodic payments from such accounts is included in annual income at the time they are received by the family.
An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value.

Social Security Benefits [Notice PIH 2023-27]
OHA is required to use the gross benefit amount to calculate annual income from Social Security benefits.

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal Social Security and SSI benefits are adjusted to reflect the increase, if any, in the cost of living. The federal COLA does not apply to state-paid disability benefits. Effective the day after the SSA has announced the COLA, PHAs are required to factor in the COLA when determining Social Security and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year [Notice PIH 2023-27].

OHA Policy
Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. When the SSA overpays an individual, resulting in a withholding or deduction from their benefit amount until the overpayment is paid in full, OHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount. Further, if a family's social security income is garnished for any reason, OHA will use the net amount after the garnishment in order to calculate the family's income.

Alimony and Child Support
Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family's child-support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [Notice PIH 2023-27].

OHA Policy
OHA will count all regular payments of alimony or child support awarded as part of a divorce or separation agreement.

OHA will count court-awarded amounts for alimony and child support unless the family certifies and OHA verifies that the payments are not being made.

In order to verify that payments are not being made, OHA will review child support payments over the last three months.

If payments are being made regularly, OHA will use the amount received during the last 12 months (excluding any lump sums received). If payments have been made for a period less than 12 months, OHA will average all payments that have been made.

At new admission or interim recertification, if any lump sum payments were made in the past 12 months, OHA will determine the likelihood of the family receiving another similar payment within the next 12 months before deciding whether or not this amount will be included in the calculation of annual income.

If OHA determines and can appropriately verify that the family in all likelihood will not receive a similar payment, then the amount will not be considered when projecting annual income.

If OHA determines that it is likely that the family will receive a similar payment and can appropriately verify it, the amount will be included when projecting annual income.

If no payments have been made in the past three months and there are no lump sums, OHA will not include alimony or child support in annual income

6-I.I. NONRECURRING INCOME [24 CFR 5.609(b)(24) and Notice PIH 2023-27]

Nonrecurring income, which is income that will not be repeated beyond the coming year (e.g., 12 months following the effective date of the certification) based on information provided by the family, is excluded from annual income. OHA may accept a self-certification from the family stating that the income will not be repeated in the coming year. See Chapter 7 for OHA policies related to verification of nonrecurring income.

Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income as nonrecurring income, even if the source, date, or amount of the income varies. Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This exclusion does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended.

Income amounts excluded under this category may include, but are not limited to:

- Nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities;
- Payments for eviction prevention;
- Security deposits to secure housing;

- Payments for participation in research studies (depending on the duration); and
- General one-time payments received by or on behalf of the family.

Nonrecurring income that is excluded under the regulations includes:

- Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment [24 CFR 5.609(b)(24)(i)].
- Direct federal or state payments intended for economic stimulus or recovery [24 CFR 5.609(b)(24)(ii)].
- Amounts directly received by the family as a result of state refundable tax credits or state or federal tax refunds at the time they are received [24 CFR 5.609(b)(24)(iii) and (iv)].
- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries) [24 CFR 5.609(b)(24)(v)].
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization [24 CFR 5.609(b)(24)(vi)]. When calculating annual income, PHAs are prohibited from assigning monetary value to non-monetary in-kind donations received by the family [Notice PIH 2023-27]. Non-recurring, non-monetary in-kind donations from friends and family are excluded as non-recurring income.
- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii)].

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.

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.

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 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. STATE PAYMENTS TO ALLOW INDIVIDUALS WITH DISABILITIES TO LIVE AT HOME [24 CFR 5.609(b)(19)]

Payments made by or authorized by a state Medicaid agency (including through a managed care entity) or other state or federal agency to an assisted family to enable a member of the assisted family who has a disability to reside in the family's assisted unit are excluded.
Authorized payments may include payments to a member of the assisted family through state Medicaid-managed care systems, other state agencies, federal agencies or other authorized entities.

OHA Policy

OHA will exclude income of an individual who is an IHSS worker for an individual in the same household who is developmentally disabled. The household must provide a verification of the developmental disability from a qualified third party.

The payments must be received for caregiving services a family member provides to enable another member of the assisted family who has a disability to reside in the family's assisted unit. Payments to a family member for caregiving services for someone who is not a member of the assisted family (such as for a relative that resides elsewhere) are not excluded from income.

Furthermore, if the agency is making payments for caregiving services to the family member for an assisted family member and for a person outside of the assisted family, only the payments attributable to the caregiving services for the caregiver's assisted family member would be excluded from income.

6-I.L. CIVIL RIGHTS SETTLEMENTS [24 CFR 5.609(b)(25); FR Notice 2/14/23]

Regardless of how the settlement or judgment is structured, civil rights settlements or judgments, including settlements or judgments for back pay, are excluded from annual income. This may include amounts received because of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act, or any other civil rights or fair housing statute or requirement.

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets (e.g., if the funds are deposited into the family's savings account or a revocable trust under the control of the family or some other asset that is not excluded from the definition of *net family assets*). Income generated on the settlement or judgment amount after it has become a net family asset is not excluded from income. For example, if the family received a settlement or back pay and deposited the money in an interest-bearing savings account, the interest from that account would be income at the time the interest is received.

Furthermore, if a civil rights settlement or judgment increases the family's net family assets such that they exceed $50,000 (as annually adjusted by an inflationary factor), then income will be imputed on the net family assets pursuant to 24 CFR 5.609(a)(2). If the imputed income, which HUD considers unearned income, increases the family's annual adjusted income by 10 percent or more, then an interim reexamination of income will be required unless the addition to the family's net family assets occurs within the last three months of the family's income certification period and OHA or owner chooses not to conduct the examination.

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME [24 CFR 5.6099b)]

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

- Payments received for the care of foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(b)(4)].
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR 5.609(b)(5)] However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income [Notice PIH 2023-27].
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6)].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7)].
- Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10)].

- Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10)].
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17)]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20)]. The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [Notice PIH 2023-27].
- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members in excess of the first $2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income in HUD programs that adopt the definitions of *annual income* in 24 CFR 5.609, the Census Long Form, and the IRS Form 1040, including the programs affected by Notice PIH 2023-27.
- Replacement housing "gap" payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments [24 CFR 5.609(b)(23)].
- Income earned on amounts placed in a family's Family Self-Sufficiency account [24 CFR 5.609(b)(27)].

- Amounts received by participants in other publicly assisted programs (e.g., special equipment, clothing, transportation, child care, etc.) and 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)(12)(ii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(b)(12)(i)]
- Amounts received under a resident service stipend not to exceed $200 per month. A resident service stipend is a modest amount received by a resident for performing a service for OHA or the owner, on a part-time basis, that enhances the quality of life in the development [24 CFR 5.600(b)(12)(iii)].

- Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv)].

  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 11).

- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(b)(13)]
- Adoption assistance payments for a child in excess of the amount of the dependent deduction per adopted child [24 CFR 5.609(b)(15)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts that HUD is required by federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(b) apply. HUD will publish a notice in the *Federal Register* to identify the benefits that qualify for this exclusion. Updates will be published when necessary [24 CFR 5.609(b)(22)].
- HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the *Federal Register* on May 20, 2014. It includes:
  (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
  (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
  (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)

(d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
(e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
(f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
(g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
(h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
(i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
(j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
(k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.,* for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
(l) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
(m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
(n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
(o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
(p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
(q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
(r) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
(s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
(t) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
(u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons

with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249) (See See Section 6-I.L. for exceptions.)

(v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))

(w) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)

(x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002

(y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013–30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))

(z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations

(aa) Distributions from an ABLE account, and actual or imputed interest on the ABLE account balance [See also Notice PIH 2019-09]

PART II: ASSETS

6-II.A. OVERVIEW

Annual income includes all actual anticipated income from assets (unless otherwise excluded by the regulations) even if the asset itself is excluded from net family assets [Notice PIH 2023-27].
The regulation at 24 CFR 5.603(b)(3) provides a list of items that are excluded from the calculation of net family assets. Note, unlike previous versions of the regulations, the current regulations do not list types of assets that are included in annual income. Instead, HUD relies on the definition of items excluded from assets to provide the scope of what is included. Exhibit 6-2 provides the regulatory definition of *net family assets*.
Optional policies for family self-certification of assets are found in Chapter 7. Policies related to the asset limitation may be found in Chapter 3.
Income from assets is always anticipated, irrespective of the income examination type.

OHA Policy

OHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. OHA will use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected, (2) it is not feasible to anticipate a level of income over 12 months, or (3) 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.

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.

6-II.B. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE [24 CFR 5.603(b)(2)]

PHAs must include the value of any business or family assets disposed of by an applicant or participant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application or reexamination, as applicable, in excess of the consideration received for the asset.
An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value. [Notice PIH 2023-27].

Minimum Threshold

HUD does not specify a minimum threshold for counting assets disposed of for less than fair market value. A PHA may establish a policy to ignore small amounts such as charitable contributions [New PH OCC GB, *Income Determinations,* p. 24].

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 $1,000.

Separation or Divorce

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

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. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

Asset Owned by a Business Entity

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].

Family Declaration

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.

6-II.C. ASSET INCLUSIONS AND EXCLUSIONS

Checking and Savings Accounts [Notice PIH 2023-27]

HUD considers bank accounts as non-necessary items of personal property. Whether or not necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

- When the combined value of net family assets is greater than $50,000, as adjusted by inflation, checking and/or savings accounts would be counted toward net family assets.

- When the combined value of all non-necessary personal property does not exceed $50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's checking and/or savings accounts would not be considered when calculating net family assets.

However, actual income from checking and savings accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded.

ABLE Accounts [24 CFR 5.609(b)(10); Notice PIH 2019-09]

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses. Section 103 of the ABLE Act mandates that an individual's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is excluded when determining the designated beneficiary's eligibility and continued occupancy under certain federal means-tested programs. OHA must exclude the entire value of the individual's ABLE account from the household's assets. Distributions from the ABLE account are also not considered income. However, all wage income received, regardless of which account the money is paid to, is included as income.

Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds [24 CFR 5.603(b)(1)]

HUD considers financial investments such as stocks and bonds non-necessary items of personal property. Whether non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

- When the combined value of net family assets is greater than $50,000, as adjusted by inflation, financial investments such as stocks and bonds are considered part of net family assets. In this case, the value of the family's financial investments such as stocks and bonds would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not exceed $50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's financial investments such as stocks and bonds would not be considered when calculating net family assets.

However, actual income from financial accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, but when no dividend is issued, the actual return is $0. When the stock never issues dividends, the actual return is $0.

OHA Policy

OHA will include interest or dividends earned by investment accounts as actual income from assets even when the earnings are reinvested.

The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

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

Necessary and Non-Necessary Personal Property [24 CFR 5.603(b)(3)(i)]
All assets are categorized as either *real property* (e.g., land, a home) or *personal property*. *Personal property* includes tangible items, like boats, as well as intangible items, like bank accounts.

The value of necessary items of personal property is excluded from the calculation of net family assets.

HUD defines *necessary personal property* as items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness. Necessary personal property includes more than merely items that are indispensable to the bare existence of the family. It may include personal effects (such as items that are ordinarily worn or utilized by the individual), items that are convenient or useful to a reasonable existence, and items that support and facilitate daily life within the family's home. Necessary personal property also includes items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for a reasonable accommodation for a person with a disability. Necessary personal property does not include bank accounts, other financial investments, or luxury items. Items of personal property that do not qualify as necessary personal property are classified as non-necessary personal property.

The combined value of all non-necessary items of personal property is only included in annual income when the combined total value exceeds $50,000 (adjusted annually). When the combined value of all non-necessary personal property does not exceed $50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets.

While not an exhaustive list, the following table from Notice PIH 2023-27 provides examples of necessary and non-necessary personal property.

Necessary Personal Property	Non-Necessary Personal Property
Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter) Furniture, carpets, linens, kitchenware Common appliances Common electronics (e.g., radio, television, DVD player, gaming system) Clothing Personal effects that are not luxury items (e.g., toys, books) Wedding and engagement rings Jewelry used in religious/cultural celebrations and ceremonies Religious and cultural items Medical equipment and supplies Health care–related supplies Musical instruments used by the family Personal computers, phones, tablets, and related equipment Professional tools of trade of the family, for example professional books Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)	Recreational car/vehicle not needed for day-to-day transportation for personal or business use (campers, motorhomes, traveling trailers, all-terrain vehicles (ATVs)) Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds) Recreational boat/watercraft Expensive jewelry without religious or cultural value, or which does not hold family significance Collectibles (e.g., coins/stamps) Equipment/machinery that is not used to generate income for a business Items such as gems/precious metals, antique cars, artwork, etc.

OHA Policy

In determining the value of non-necessary personal property, OHA will use the family's estimate of the value. OHA may obtain an appraisal if there is reason to believe that the family's estimated value is off by $50 or more. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

Lump-Sum Additions to Net Family Assets [24 CFR 5.609(b)(24(viii); Notice PIH 2023-27]
The regulations exclude income from lump-sum additions to family assets, including lottery or other contest winnings as a type of nonrecurring income.

In addition, lump sums from insurance payments, settlements for personal or property losses, and recoveries from civil actions or settlements based on claims of malpractice, negligence, or other breach of duty owed to a family member arising out of law that resulted in a member of the family becoming a family member with a disability are excluded from income.

Further, deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts are also excluded from income.

However, these amounts may count toward net family assets. OHA must consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by 10 percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter 9. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months of family's income certification period and OHA chooses not to conduct the examination.

For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.

OHA Policy

Any lump-sum receipts are only counted as assets if they are retained by a family in a form recognizable as an asset. [RHIIP FAQs]. For example, if the family receives a $1,000 lump sum for lottery winnings, and the family immediately spends the entire amount, the lump sum will not be counted toward net family assets.

Jointly Owned Assets [Notice PIH 2023-27]
For assets owned jointly by the family and one or more individuals outside of the assisted family, OHA must include the total value of the asset in the calculation of net family assets, unless:

- The asset is otherwise excluded;
- The family can demonstrate that the asset is inaccessible to them; or
- The family cannot dispose of any portion of the asset without the consent of another owner who refuses to comply.

If the family demonstrates that they can only access a portion of an asset, then only that portion's value is included in the calculation of net family assets for the family.
Any income from a jointly owned asset must be included in annual income, unless:

- The income is specifically excluded;
- The family demonstrates that they do not have access to the income from that asset; or
- The family only has access to a portion of the income from that asset.

OHA Policy

If the family demonstrates that they can only access a portion of the income from an asset, then only that portion's value is included in the calculation of income from assets.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset to the assisted family, and the family should provide proper documentation demonstrating that they are only a beneficiary on the account.

Trusts [24 CFR 5.609(b)(2) and 5.603(b)(4)]

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

The following types of trust distributions are excluded from annual income:

- Distributions of the principal or corpus of the trust; and
- Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account. There are two types of trusts, *revocable* and *irrevocable*.

When the creator sets up an *irrevocable trust*, the creator has no access to the funds in the account. Irrevocable trusts not under the control of any member of the family or household are not assets. Typically, special needs trusts are considered irrevocable. The value of the trust is not included in net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household [24 CFR 5.603(b)(4)]. Where an irrevocable trust is excluded from net family assets, OHA must not consider actual income earned by the trust (e.g., interest earned, rental income if property is held in the trust) for so long as the income from the trust is not distributed. If the value of the trust is not considered part of the family's net assets, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.
- Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

A *revocable trust* is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account.

The value of revocable trusts that are not under the control of the family are excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not "own" the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee. If this is the case, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.
- Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

Revocable trusts under the control of the family or household (e.g., the grantor is a member of the assisted family or household) are considered assets and must be included in net family assets. If the value of the trust is considered part of the family's net assets, then distributions from the trust are not considered income to the family. OHA must count all actual returns (e.g., interest earned) from the trust as income or, if the trust has no actual returns (e.g., if the trust is comprised of farmland that is not in use) and the total value of the combined net family assets exceeds $50,000 (as that amount is updated for inflation), as imputed returns, as applicable.

Life Insurance [FR Notice 2/14/23 and Notice PIH 2023-27]
Net family assets do not include the value of term life insurance, which has no cash value to the individual before death.

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets. The cash value is the surrender value. While the cash value of an insurance policy is considered an asset, the face value of any policy is not. If such a policy earns dividends or interest that the family could elect to receive, the amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

Tax Refunds [24 CFR 5.603(b)(3)(xi) and Notice PIH 2023-27]
All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family.

At the time of an annual or interim reexamination of income, if the federal tax refund was received during the 12 months preceding the effective date of the reexamination, then the amount of the refund that was received by the family is subtracted from the total value of the account in which the federal tax refund or refundable tax credits were deposited. When the subtraction results in a negative number, then the balance of the asset is considered $0.

If the tax refund or refundable tax credit is deposited into another excluded asset, such as a retirement account or a Coverdell Education Savings Account, then the deposit will have no effect on the balance of the asset (i.e., there is no need for OHA to subtract the amount of the deposit from the value of the excluded asset).

Asset Exclusions [24 CFR 5.603(b)]
The following are excluded from the calculations of net family assets:

- The value of any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals [24 CFR 5.603(b)(3)(iii)].
- The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located [24 CFR 5.603(b)(3)(iv)].
    - *Real property* as used in this part has the same meaning as that provided under the law of the state in which the property is located [24 CFR 5.100].
    - Examples of this include but are not limited to co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property; property that is tied up in litigation; and inherited property in dispute [Notice PIH 2023-27].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability [24 CFR 5.603(b)(3)(v)];
- The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 [24 CFR 5.603(b)(3)(vi)];
- The value of any qualified tuition program under Section 529 of such Code [24 CFR 5.603(b)(3)(vi)];
- The value of any "baby bond" account created, authorized, or funded by federal, state, or local government [24 CFR 5.603(b)(3)(vi)];
- Interests in Indian trust land [24 CFR 5.603(b)(3)(vii)];
- Equity in a manufactured home where the family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(viii)];
- Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(ix)];
- Family Self-Sufficiency accounts [24 CFR 5.603(b)(3)(x)];
- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family [24 CFR 5.603(b)(3)(xi)].
- The full amount of assets held in an irrevocable trust [Notice PIH 2023-27]; and
- The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household [Notice PIH 2023-27].

6-II.D. DETERMINING INCOME FROM ASSETS

In some cases, amounts that are excluded from net family assets may be included as annual income when disbursements are made to a family from an asset. In other cases, amounts are excluded from annual income as a lump-sum addition to net family assets, but those funds are then considered a net family asset if held in an account or other investment that is considered part of net family assets [Notice PIH 2023-27].

Net Family Assets

Net family assets are defined as the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

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 such as settlement costs and transfer taxes [New PH OCC GB, *Income Determinations,* p. 24].

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

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

The cash value of real property or other assets with negative equity would be considered $0 for the purposes of calculating net family assets. Negative equity in real property or other investments does not prohibit the family from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets [Notice PIH 2023-27].

Actual Income from Assets

Income from assets must be included on the Form HUD-50058 regardless of the amount of income. Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by 24 CFR 5.609(b).

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

OHA may determine the net assets of a family based on a self-certification by the family that the net family assets do not exceed $50,000 (adjusted annually by HUD), without taking additional steps to verify the accuracy of the declaration [24 CFR 5.618(b)]. Policies related to verification of assets are found in Chapter 7 of this policy.

OHA may not calculate or include any imputed income from assets when net family assets total $50,000 or less [24 CFR 5.609(b)(1)]. The actual income from assets must be included on the Form HUD-50058.

Imputed Income from Assets

When net family assets exceed $50,000 (adjusted annually by HUD), OHA may not rely on self-certification. If actual returns can be calculated, OHA must include actual income from the asset on the Form HUD-50058 (for example, a savings account or CD where the rate of return is known). If actual returns cannot be calculated, OHA must calculate imputed returns using the HUD-determined passbook rate (for example, real property or a non-necessary item of personal property such as a recreational boat). If OHA can compute actual income from some but not all assets, OHA must compute actual returns where possible and use the HUD-determined passbook rate for assets where actual income cannot be calculated [24 CFR 5.609(a)(2)].

An asset with an actual return of $0 (such as a non-interest-bearing checking account), is not the same as an asset for which an actual return cannot be computed (such as non-necessary personal property). If the asset is a financial asset and there is no income generated (for example, a bank account with a zero percent interest rate or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is $0. When the stock never issues dividends, the actual return is consistently $0.

PART III: ADJUSTED INCOME

6-III.A. INTRODUCTION

Under MTW Authority, OHA may implement reasonable family payment policy including total tenant payment, minimum rent, utility reimbursements and tenant rent, including but not limited to establishing definitions of income and adjusted income, or earned income disallowance. The Authority may adopt and implement term limits for its public housing assistance. Such policies will include provisions for addressing hardship cases. ***This authorization waives certain provisions of Section 3(a)(2), 3(a)(3)(A) and Section6(l) of the 1937 Act and 24 C.F.R. 5.603, 5.611, 5.628, 5.630, 5.632, 5.634 and 960.255 and 966 Subpart A as necessary to implement the Agency's Annual MTW Plan.***

Overview

HUD regulations require OHA to deduct from annual income any of five mandatory deductions for which a family qualifies and allows OHA to deduct other permissive deductions in accordance with OHA policy. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611*Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions*.

(1) $480 for each dependent (adjusted annually by HUD, rounded to the next lowest multiple of $25);

(2) $525 for any elderly family or disabled family (adjusted annually by HUD, rounded to the next lowest multiple of $25);

(3) The sum of the following, to the extent the sum exceeds ten percent of annual income:

(i) Unreimbursed 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.; 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.

OHA Policy

All mandatory deductions are eliminated for all households participating in the MTW Rent Reform Pilot (Activity #13-01).

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 non-school 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.

When calculating health and medical care expenses, OHA will include those expenses anticipated to be incurred during the 12 months following the certification date reexam which are not covered by an outside source, such as insurance. The allowance is not intended to give a family an allowance equal to last year's expenses, but to anticipate regular ongoing and anticipated expenses during the coming year. Since these expenses are anticipated, the *PH Occupancy Guidebook* states "it is likely that actual expenses will not match what was anticipated. Typically, this would not be considered an underpayment as long as at the time of the annual reexamination, the expenses were calculated based on the appropriate verification" [New PH OCC GB, *Income Determinations,* p. 30]. For annual reexaminations, OHA will use information for the previous 12-month period.

6-III.B. DEPENDENT DEDUCTION

A deduction of $480 is taken for each dependent (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of $25) [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or co-head who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)]

6-III.C. ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of $525 is taken for any elderly or disabled family (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of $25) [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403].

6-III.D. HEALTH AND MEDICAL CARE EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]

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

This medical expense deduction is permitted only for families in which the head, spouse, or co- head is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted.

Definition of Medical Expenses

HUD regulations define *health and medical care expenses* at 24 CFR 5.603(b) to mean "any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed."

Medical insurance premiums continue to be eligible health and medical care expenses. Health and medical care expenses may be deducted from annual income only if they are eligible and not otherwise reimbursed and may only be deducted for elderly or disabled families.

Although HUD revised the definition of *health and medical care expenses* to reflect the Internal Revenue Service (IRS) general definition of medical expenses, HUD is not permitting PHAs to specifically align their policies with IRS Publication 502 for determining which expenses are included in HUD's mandatory deduction for health and medical care expenses. PHAs must review each expense to determine whether it is eligible in accordance with HUD's definition of *health and medical care expenses*.

Families that Qualify for Both Health and Medical and Disability Assistance Expenses

OHA Policy

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

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

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

Unreimbursed reasonable expenses for attendant care and auxiliary apparatus for each member of the family who is a person with disabilities may be deducted if they: (1) are necessary to enable a family member 18 years or older to work,

(2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed 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 [New PH OCC GB, *Income Determination,* p. 28].

Eligible Auxiliary Apparatus [Notice PIH 2023-27]

Auxiliary apparatus items may include expenses for wheelchairs, ramps, adaptations to vehicles, guide dogs, assistance animals, or special equipment to enable a person who is blind or has low vision to read or type, or special equipment to assist a person who is deaf or hard of hearing.

Eligible Attendant Care [Notice PIH 2023-27]

Examples of attendant care expenses can include teaching a person with disabilities how to perform day-to-day tasks independently like cleaning, bathing, doing laundry, and cooking. Attendant care can be 24-hour care, or care during sporadic periods throughout the day. The family determines the type of attendant care that is appropriate for the person with disabilities.

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 Health and Medical and Disability Assistance Expenses

OHA Policy

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

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

6-III.F. CHILD CARE EXPENSE DEDUCTION

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

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 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.

6-III.G. HARDSHIP EXEMPTIONS [24 CFR 5.611(c),(d), and (e)

Health and Medical Care and Disability Assistance Expenses [24 CFR 5.611(c); Notice PIH 2023-27]

The regulations provide for two types of hardship exemption categories for families that qualify for unreimbursed health and medical care expenses and/or disability assistance expenses. A family will benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of five percent of annual income. In order to claim unreimbursed health and medical care expenses, the family must have a head, cohead, or spouse that is elderly or a person with a disability. In order to claim unreimbursed reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed.

Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below.

Phased-In Relief

The first category is applicable to all families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review prior to January 1, 2024. The family must receive phased-in relief if they are determined to be eligible as of January 1, 2024. These families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first. For these families, the threshold amount is phased-in as follows:

- The family is eligible for a deduction totaling the sum of expenses that exceeds 5 percent of annual income for the first 12 months.
- At the conclusion of 12 months, the family is eligible for a deduction totaling the sum of their expenses that exceed 7.5 percent of annual income for another 12 months.
- At the conclusion of 24 months, the standard threshold amount of 10 percent would be used, unless the family qualifies for relief under the general hardship relief category.
    - When an eligible family's phased-in relief begins at an interim reexamination, OHA will need to process another transaction one year later to move the family along to the next phase. The transaction can be either an interim reexamination if triggered, or a non-interim reexamination transaction.

Prior to the end of the 24-month period, the family may request a hardship exemption under the second category as described below. If the family is found eligible under the second category, the hardship exemption under the first category ends, and the family's hardship is administered in accordance with the requirements listed below. Once a family requests general relief, the family may no longer receive phased-in relief.

PHAs must track the 24-month phase-period for each eligible family, even if a family's expenses go below the appropriate phase-in percentage, during the first or second 12-month phase-in period. The phase-in must continue for families who move to another public housing unit at the same PHA. When the family is treated as a new admission under a different property/program (e.g., the family moves from public housing to the HCV program), unless OHA has a written

policy to continue the phased-in relief upon admission, the family's expense deduction will be calculated using the 10-percent threshold unless request for general relief is approved by OHA.

OHA Policy

OHA will not continue the phased-in relief for families who move from the HCV program to public housing. These families will be treated as new admissions and the sum of expenses that exceeds 10 percent of annual income will be used to calculate their adjusted income.

General Relief

The second category is for families that can demonstrate:

- Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- The family's financial hardship is a result of a change in circumstances (as defined in OHA policy) that would not otherwise trigger an interim reexamination.

The family may request a hardship exemption under the second category regardless of whether the family previously received the health and medical and/or disability assistance deductions or are currently or were previously receiving relief under the phased-in relief category above. HUD requires that PHAs develop policies defining what constitutes a hardship for purposes of this exemption.

OHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. OHA must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

OHA Policy

To qualify for a hardship exemption, a family must submit a request in writing. The request must show that the family's health and medical and/or disability assistance expenses have increased (other than the transition to the higher threshold) or that the family's financial hardship is a result of a change in circumstances. OHA defines *a change in circumstances* as a decrease in income or increase in other expenses that has resulted in the family's financial hardship but does not, on its own, trigger an interim reexam in accordance with OHA policies.

Examples of *circumstances* constituting a financial hardship may include the following situations:

The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits;

The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster; or

Other circumstances as determined by OHA.

The family must provide third-party verification of the hardship with the request. If third-party *verification* is not available, OHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

OHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions. The notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)].

OHA Policy

OHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If OHA denies the hardship exemption request, OHA notice will also state that if the family does not agree with OHA determination, the family may request a hearing.

If the family qualifies for an exemption, OHA will include the date the hardship exemption will begin and the date it will expire as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the family will receive a deduction for the sum of eligible expenses that exceed five percent of annual income.

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, OHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues. PHAs are not limited to a maximum number of 90-day extensions. PHAs must establish written policies regarding the types of circumstances that will allow a family to qualify for a financial hardship and when such deductions may be eligible for additional 90-day extensions. PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

OHA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. OHA will extend relief for an additional 90-days if the family demonstrates to OHA's satisfaction that the family continues to qualify for the hardship exemption based on circumstances described above. OHA will require updated verification based on the family's current circumstances. Additional extension may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, OHA may terminate the hardship exemption if OHA determines that the family no longer qualifies for the exemption.

Child Care Expense Hardship Exemption [24 CFR 5.611(d) and Notice PIH 2023-27]

A family whose eligibility for the child care expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to OHA's satisfaction that the family is unable to pay their rent because of the loss of the child care

expense deduction, and that the child care expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, OHA must recalculate the family's adjusted income and continue the child care deduction.

OHA must develop a policy to define what constitutes a hardship, which includes the family's inability to pay rent. OHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

OHA Policy

For a family to qualify, they must demonstrate that their inability to pay rent would be as a result of the loss of this deduction. OHA defines this hardship as a potential decrease in income or increase in other expenses that would result from the loss of the child care expense and such loss would impact the family's ability to pay their rent.

Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (child care expenses or health and medical expenses) are more than 40 percent of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent.

The family must also demonstrate that the child care expense is still necessary even though the family member is no longer employed or furthering their education. OHA will consider qualification under this criterion on a case-by case basis (for example, if the family member who was employed has left their job in order to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town). The family must provide third-party verification of the hardship with the request. If third-party verification is not available, OHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

OHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions.
If OHA denies the request, the notice must specifically state the reason for the denial. OHA must provide families 30 days' notice of any increase in rent.

If OHA approves the request, the notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)]. The notice must also state the requirement for the family to report to OHA if the circumstances that made the family eligible for relief are no longer applicable and that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption [Notice PIH 2023-27].

OHA Policy

OHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If OHA denies the hardship exemption request, OHA notice will also state that if the family does not agree with OHA determination, the family may request a grievance hearing.
If the family qualifies for an exemption, OHA will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days.

OHA may, at its discretion, extend the hardship exemptions for additional 90-day periods based on family circumstances and as stated in OHA policies. PHAs are not limited to a maximum number of 90-day extensions. . PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

OHA must promptly notify families in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. If OHA denies the request, the notice must specifically state the reason for the denial.

OHA must notify the family if the hardship exemption is no longer necessary and the hardship exemption will be terminated because the circumstances that made the family eligible for the exemption are no longer applicable. The notice must state the termination date and provide 30 days' notice of rent increase, if applicable.

OHA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. OHA will extend relief for an additional 90-days if the family demonstrates to OHA's satisfaction that the family continues to qualify for the hardship exemption. OHA will require updated verification based on the family's current circumstances. Additional extensions may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, OHA may terminate the hardship exemption if OHA determines that the family no longer qualifies for the exemption.

6-III.H. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)(i)]

OHA has opted not to use permissive deductions.

PART IV: CALCULATING RENT

6-IV.A. OVERVIEW OF INCOME-BASED RENT CALCULATIONS

Under MTW Authority, OHA may implement reasonable family payment policy including total tenant payment, minimum rent, utility reimbursements and tenant rent, including but not limited to establishing definitions of income and adjusted income, or earned income disallowance. The Authority may adopt and implement term limits for its public housing assistance. Such policies will include provisions for addressing hardship cases. ***This authorization waives certain provisions of Section 3(a)(2), 3(a)(3)(A) and Section6(l) of the 1937 Act and 24 C.F.R. 5.603, 5.611, 5.628, 5.630, 5.632, 5.634 and 960.255 and 966 Subpart A as necessary to implement the Agency's Annual MTW Plan.***

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.

OHA Policy

The TTP of families participating in the MTW Rent Reform Pilot will be calculated based on whether they are identified as Senior, Disabled, or Work-Eligible. Senior and Disabled households TTP is calculated as 27.5 percent of the family's gross monthly income and Work-Eligible families TTP is 27 percent of the family's gross monthly income.

Minimum Rent [24 CFR 5.630]

OHA Policy

The minimum rent for this locality is $50, except for households participating in the MTW Rent Reform Pilot, in which case the minimum rent is $25.

Optional Changes to Income-Based Rents [24 CFR 960.253(c)(2) and PH Occ GB, pp. 131-134]

OHA 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 OHA, 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)] [MTW]

OHA is not limited to establishing a utility allowance schedule in accordance with HUD requirements. OHA is authorized to establish a utility allowance policy for the MTW public housing program that will reduce costs and achieve greater cost effectiveness in Federal expenditures.

OHA Policy

Under MTW authority, OHA will eliminate the Utility Reimbursement Payment (URP). The URP will no longer be provided for program households each month**.**

For MTW Rent Reform Hardship, see section 6-III.B.

6-IV.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 non-citizen 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.

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.

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.

In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income).

(5) The family has experienced other circumstances determined by OHA.

OHA currently has not established fixed hardship criteria, but will consider each case individually

MTW Rent Reform Hardships

OHA will provide notification to all households at least six-months prior to implementation of the new UA policy. Households that submit a request and qualify as a hardship case will receive an additional six-month deferment of the new UA policy. All requests for extensions of the hardship period will be reviewed by the Executive Director, or his designee, on a case-by-case basis. The hardship policy applies to cases that meet the following criteria:

- The UA or URP decreased by greater than $50, and
- Head of household/Co-head/Spouse is elderly or disabled, or
- Household verifies enrollment in a reduced rate utility program (i.e. PG&E CARE).

Implementation of Financial 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 for minimum rent, 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 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

OHA will review the family's income and hardship status every 120 days and ensure the family is participation in supportive services

The hardship period ends when any of the following circumstances apply:

- At an interim or next scheduled reexamination, the family's calculated TTP is greater than the minimum rent.

6-IV.C. UTILITY ALLOWANCES [24 CFR 965, Subpart E]

Overview

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. An OHA-established utility allowance schedule is used when determining a family's income-based rent or flat rent. OHA must use the utility allowance applicable to the number of certified bedrooms assigned to the family.

Under MTW Authority, OHA is authorized to adopt and implement any reasonable policy to establish payments, rents or subsidy levels from tenant-based assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. OHA is authorized to adopt and implement any reasonable policies to calculate the tenant portion of rent that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. ***This authorization waives certain provisions of Section 3(a)(2), 3(a)(3)(A) and Section 6(l) of the 1937 Act and 24 CFR 5.603, 5.611, 5.628, 5.630, 5.632, 5.634 and 960.255 and 966 Subpart A, as necessary to implement the Agency's Annual MTW Plan***

OHA is not limited to establishing a utility allowance schedule in accordance with HUD requirements. OHA is authorized to establish a utility allowance policy for the MTW public housing program that will reduce costs and achieve greater cost effectiveness in Federal expenditures. Policies developed under MTW authority also are designed to encourage low income families to take advantage of reduced rate utility programs and to conserve and control their energy consumption.

For policies on establishing the MTW utility allowances, see Chapter 16-I.B.

Reasonable Accommodation [24 CFR 8]

On request from a family, OHA must approve a utility allowance that is higher than the applicable amount for the number of individuals in the household if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability.

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172]. See Chapter 2 for policies related to reasonable accommodations.

Utility Allowance Revisions [24 CFR 965.507]

At reexamination, OHA may use its current MTW utility allowance schedule.

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is effective after the allowance is adopted.

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 scheduled reexamination after the

allowance is adopted, up to and including any utility allowance schedule developed under MTW authority.

For families on a biennial/triennial reexamination schedule, revised utility allowances will be applied on the earlier of the first anniversary date or first reexamination date following the adoption of the revised utility allowances.

6-IV.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. OHA must prorate the assistance provided to a mixed family. 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, OHA must:

(1) Subtract the TTP from the flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible (family maximum subsidy) .
(2) Divide the family maximum subsidy by the number of persons in the family (all persons) 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. The product of this step is the amount of subsidy the family is eligible to receive
(4) Subtract the subsidy calculated in the last step from the flat rent. This is the prorated TTP.
(5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family.
(6) When the mixed family's TTP is greater than the applicable flat rent, OHA will use the TTP as the prorated TTP. The prorated TTP minus the utility allowance is the prorated rent for the mixed family.

OHA Policy

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

6-IV.E. FLAT RENTS AND FAMILY CHOICE IN RENTS [24 CFR 960.253]

Flat Rents [24 CFR 960.253(b)]

The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient. OHA is required to apply a utility allowance to flat rents, as necessary. Flat rents are set at 80 percent of the FMR, unless there is an exception granted by HUD, and must be reduced by the amount of the unit's utility allowance, if any. 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)]

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

Upon admission and each subsequent regularly scheduled reexamination OHA will offer the family the choice between flat and income-based rent.

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].

Phasing In Flat Rents [Notice PIH 2017-23; 24 CFR 960.253(b)]

When new flat rents requirements were implemented in 2014, HUD limited the increase for existing residents paying flat rent at that time to no more than 35 percent of the current tenant rent per year. In some cases, this meant that some residents had or will have their flat rents phased-in at the time of their annual recertification. To do this, PHAs conduct a flat rent impact analysis to determine whether a phase-in is or was necessary. For families whose flat rent is being phased-in, OHA must multiply the family's current rent amount by 1.35 and compare the result to the flat rent under OHA's policies. Families who have subsequently been admitted to the program or have subsequently selected flat rent will not experience a phase-in.

Notice PIH 2017-23 requires that flat rents must be phased in at the full 35 percent per year. PHAs do not have the option of phasing in flat rent increases at less than 35 percent per year.

Example: A family was paying a flat rent of $500 per month. At their annual recertification, the PHA has increased the flat rent for their unit size to comply with the new requirements to $700. The PHA conducted a flat rent impact analysis as follows:

$500 x 1.35 = $675

Since the PHA's increased flat rent of $700 resulted in a rent increase of more than 35 percent, the PHA offered the family the choice to pay either $675 per month or an income-based rent. The flat rent increase was phased in. At their next annual recertification in November 2015, the PHA will again multiply the family's current flat rent by 1.35 and compare the results to the PHA's current flat rent.

Change in Flat Rents

OHA Policy
Changes to flat rents, up or down, will not affect families paying flat rent until their next scheduled recertification 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.

Under the EID original calculation method, a family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their exclusion period would have the exclusion period continue while paying flat rent as long as the employment that is the subject of the exclusion continues. A family paying flat rent could therefore see a family member's exclusion period expire while the family is paying flat rent.

Under the EID revised calculation method, a family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their exclusion period would have the exclusion period continue while paying flat rent regardless whether the employment that is the subject of the exclusion continues. A family paying flat rent could therefore see a family member's exclusion period expire while the family is paying flat rent.

EXHIBIT 6-1: ANNUAL INCOME FULL DEFINITION

24 CFR 5.609

(a) Annual income includes, with respect to the family:

(1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(2) When the value of net family assets exceeds $50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

(b)Annual income does not include the following:

(1) Any imputed return on an asset when net family assets total $50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):

(A) Distributions of the principal or corpus of the trust; and

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under the 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and

(ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from—

1) The Federal government;

2) A State, Tribe, or local government;

3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);

4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or

5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;

2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section);

3) Gifts, including gifts from family or friends; or

4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii)€ of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;

2) Expressly to assist a student with the costs of higher education; or

3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(9) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by Federal, State, or local government.

(10) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(i) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g.,

special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iii) Amounts received under a resident service stipend not to exceed $200 per month. A resident service stipend is a modest amount received by a resident for performing a service for OHA or the owner, on a part-time basis, that enhances the quality of life in the development.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.

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

(12) Earned income of dependent fulltime students in excess of the amount of the deduction for a dependent in § 5.611.

(13) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

(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, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

(16) 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.

(17) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(18) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(19) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments

are also excluded from gross income under the Internal Revenue Code or other Federal law.

(20) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(21) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(22) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

(i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(23) Civil rights settlements or judgments, including settlements or judgments for back pay.

(24) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(25) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(26) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; and

(ii) Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

EXHIBIT 6-2: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

(1) Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

(2) In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all nonnecessary items of personal property if the combined total value does not exceed $50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; (iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located; (v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability; (vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any "baby bond" account created, authorized, or funded by Federal, State, or local government. (vii) Interests in Indian trust land; (viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982; (ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982; (x) Family Self-Sufficiency Accounts; and (xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(4) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

EXHIBIT 6-3: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

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

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

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

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

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

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

Specified welfare benefit reduction.

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

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

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

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

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

(c) *Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to OHA 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 OHA, the welfare agency will inform OHA 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 OHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. OHA 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 OHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to OHA 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) OHA 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 OHA decision.*

(1) Public housing. If a public housing tenant claims that OHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if OHA denies the family's request to modify such amount, OHA shall give the tenant written notice of such denial, with a brief explanation of the basis for OHA determination of the amount of imputed welfare income. OHA notice shall also state that if the tenant does not agree with OHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review OHA 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 OHA 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 OHA 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 OHA denies the family's request to modify such amount, OHA shall give the family written notice of such denial, with a brief explanation of the basis for OHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with OHA determination, the family may request an informal hearing on the determination under OHA hearing procedure.

(e) *OHA relation with welfare agency.*

(1) OHA must ask welfare agencies to inform OHA 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 OHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) OHA 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 OHA. However, OHA 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. OHA shall be entitled to rely on the welfare agency notice to OHA of the welfare agency's determination of a specified welfare benefits reduction.

CHAPTER 7: VERIFICATION [24 CFR 960.259, 24 CFR 5.230, Notice PIH 2023-27]

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 must follow the verification guidance provided by HUD in Notice PIH 2023-27 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary OHA policies.

Part I describes the general verification process. Part II provides more detailed requirements related to family information. Part III provides information on income and assets, and Part IV covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies established by OHA.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 960.259; 24 CFR 5.230; and Notice PIH 2023-27]

Consent Forms

The family must supply any information that 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)]. All adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. While PHAs must use form HUD-9886, this form does not release all the information necessary to the administration of the program. OHA must also develop its own release forms to cover all other necessary information.

Form HUD-9886 [24 CFR 5.230(b)(1), (b)(2), (c)(4), and (c)(5); Notice PIH 2023-27]

All adult applicants and tenants must sign form HUD-9886, Authorization for Release of Information. All adult family members (and the head and spouse/cohead regardless of age) are required to sign the Form HUD-9886 at admission. Participants, prior to January 1, 2024, signed and submitted Form HUD-9886 at each annual reexamination. HOTMA eliminated this requirement and instead required that the Form HUD-9886 be signed only once. On or after January 1, 2024 (regardless of OHA's HOTMA compliance date), current program participants must sign and submit a new Form HUD-9886 at their next interim or annual reexamination. This form will only be signed once. Another Form HUD-9886 will not be submitted to OHA except under the following circumstances:

- When any person 18 years or older becomes a member of the family;
- When a current member of the family turns 18; or
- As required by HUD or OHA in administrative instructions.

OHA has the discretion to establish policies around when family members must sign consent forms when they turn 18. PHAs must establish these policies stating when family members will be required to sign consent forms at intervals other than at reexamination.

OHA Policy

Family members turning 18 years of age between annual recertifications will be notified in writing that they are required to sign the required Consent to the Release of Information Form HUD-9886 at the family's next annual or interim reexamination, whichever is earlier.

The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and 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).

OHA may obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever OHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits [24 CFR 5.230(c)(4)].

The executed form will remain effective until the family is denied assistance, assistance is terminated, or the family provides written notification to OHA to revoke consent.

Penalties for Failing to Consent [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, OHA must deny admission to applicants and terminate the lease of tenants [24 CFR 5.232(a)]. The family may request a hearing in accordance with OHA's grievance procedures.

However, this does not apply if the applicant, participant, or any member of their family, revokes their consent with respect to the ability of OHA to access financial records from financial institutions, unless OHA establishes a policy that revocation of consent to access financial records will result in denial or termination of assistance or admission [24 CFR 5.232(c)]. PHAs may not process interim or annual reexaminations of income without the family's executed consent forms.

OHA Policy

OHA has established a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance in accordance with OHA policy.

In order for a family to revoke their consent, the family must provide written notice to OHA.

Within 10 business days of the date the family provides written notice, OHA will send the family a notice acknowledging receipt of the request and explaining that revocation of consent will result in denial or termination of assistance, as applicable. At the same time, OHA will notify the local HUD office.

7-I.B. USE OF OTHER PROGRAMS' INCOME DETERMINATIONS [24 CFR 5.609(c)(3) and Notice PIH 2023-27]

PHAs may, but are not required to, determine a family's annual income, including income from assets, prior to the application of any deductions, based on income determinations made within the previous 12-month period, using income determinations from means-tested federal public assistance programs. PHAs are not required to accept or use determinations of income from other federal means-tested forms of assistance. If OHA adopts a policy to accept this type of verification, then OHA must establish in policy when they will accept Safe Harbor income determinations and from which programs. PHAs must also create policies that outline the course of action when families present multiple verifications from the same or different acceptable Safe Harbor programs. Means-tested federal public assistance programs include:

- Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601, et seq.);
- Medicaid (42 U.S.C. 1396 et seq.);

- Supplemental Nutrition Assistance Program (SNAP) (42 U.S.C. 2011 et seq.);
- Earned Income Tax Credit (EITC) (26 U.S.C. 32);
- Low-Income Housing Credit (LIHTC) program (26 U.S.C. 42);
- Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC) (42 U.S.C. 1786);
- Supplemental Security Income (SSI) (42 U.S.C. 1381 et seq.);
- Other programs administered by the HUD Secretary;
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding; and
- Other federal benefit determinations made in other forms of means-tested federal public assistance that the Secretary determines to have comparable reliability and announces through the *Federal Register.*

If OHA elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information by means of a third-party verification. The third-party verification must state the family size, must be for the entire family, and must state the amount of the family's annual income. The annual income need not be broken down by family member or income type. Annual income includes income earned from assets, therefore when using Safe Harbor to verify a family's income, PHAs will neither further inquire about a family's net family assets, nor about the income earned from those assets, except with respect to whether or not the family owns assets that exceed the asset limitation in 24 CFR 5.618. The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by OHA:

- Income determination effective date;
- Program administrator's signature date;
- Family's signature date;
- Report effective date; or
- Other report-specific dates that verify the income determination date.

The only information that PHAs are permitted to use to determine income under this method is the total income determination made by the federal means-tested program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters; however, these determinations and any other information must not be considered by OHA. PHAs are not permitted to mix and match Safe Harbor income determinations and other income verifications.

If OHA is unable to obtain Safe Harbor documentation or if the family disputes the other program's income determination, OHA must calculate the family's annual income using traditional methods as outlined in Notice PIH 2023-27 and this chapter.

If OHA uses a Safe Harbor determination to determine the family's income, the family is obligated to report changes in income that meet OHA's reporting requirement and occur after the effective date of the transaction.

The amounts of unreimbursed reasonable attendant care expenses and child-care expenses deducted from a family's annual income, except for when a family is approved for a child-care expense hardship exemption, must still be capped by the amount earned by any family member who is enabled to work as a result of the expense. PHAs are therefore required to obtain third-party verification of the applicable employment income and cap the respective expense deductions accordingly.

OHA Policy

When available and applicable, OHA will accept other programs' Safe Harbor determinations of income at annual reexamination to determine the family's total annual income. OHA will still require third-party verification of all deductions such as the health and medical care expense or child care expense deductions. Further, if the family is eligible for and claims the disability assistance expense or child care expense deductions, where applicable, OHA will obtain third-party verification of the amount of employment income of the individual(s) enabled to work in order to cap the respective expenses as required.

Prior to using any Safe Harbor determination from another program, OHA will ask the family if they agree with the income amounts listed. If the family disputes the income amounts on the Safe Harbor determination, OHA will obtain third-party verification of all sources of income and assets (as applicable).

OHA will not accept other programs' determinations of income for any new admission or interim reexamination.

With the exception of income determinations made under the Low-Income Housing Tax Credit (LIHTC) program, OHA will accept Safe Harbor determinations from any of the programs listed above.

In order to be acceptable, the income determination must:

Be dated within 12 months of the dates listed above;
State the family size;

Be for the entire family (i.e., the family members listed in the documentation must match the family's composition in the assisted unit, except for household members); and
Must state the amount of the family's annual income.

The determination need not list each source of income individually. If OHA does not receive any acceptable income determination documentation or is unable to obtain documentation, then OHA will revert to third-party verification of income for the family.

When families present multiple verifications from the same or different acceptable Safe Harbor programs, OHA will use the most recent income determination, unless the family presents acceptable evidence that OHA should consider an alternative verification from a different Safe Harbor source.

When OHA uses a Safe Harbor income determination from another program, and the family's income subsequently changes, the family is required to report the change to OHA. Depending on when the change occurred, the change may or may not impact OHA's calculation of the family's total annual income. Changes that occur between the time OHA receives the Safe Harbor documentation and the effective date of the family's annual reexam will not be considered. If the family has a change in income that occurs after the annual reexam effective date, OHA will conduct an interim reexam if the change meets the requirements for performing an interim reexamination as outlined in Chapter 9. In this case, OHA will use third-party verification to verify the change.

7-I.C. STREAMLINED INCOME DETERMINATIONS [24 CFR 960.257(c); Notice PIH 2023-27]

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years, OHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or other inflationary adjustment factor. Streamlining policies are optional. OHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, OHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources.

When 90 percent or more of a family's unadjusted income is from fixed sources, OHA may apply the inflationary adjustment factor to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed and that their sources of fixed income have not changed from the previous year. Sources of non-fixed income are not

required to be adjusted and must not be adjusted by a COLA, but PHAs may choose to adjust sources of non-fixed income based on third-party verification. PHAs have the discretion to either adjust the non-fixed income or carry over the calculation of non-fixed income from the first year to years two and three.

When less than 90 percent of a family's unadjusted income consists of fixed income, PHAs may apply a COLA to each of the family's sources of fixed income. PHAs must determine all other income using standard verification requirements as outlined in Notice PIH 2023-27.

OHA Policy

When OHA does not use a Safe Harbor income determination from a federal assistance program to determine the family's annual income as outlined above, then OHA will use a streamlined income determinations where applicable.

If 90 percent or more of a family's unadjusted income is from fixed income sources:

OHA will streamline the annual reexamination process by applying the verified inflationary adjustment factor to fixed-income sources.

The family will be required to sign a self-certification stating that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year.

OHA will document in the file how the determination that a source of income was fixed was made.

Third-party verification of non-fixed income will be obtained annually regardless of the percentage of family income received from fixed sources.

If the family's sources of fixed income have changed from the previous year, OHA will obtain third-party verification of any new sources of fixed income.

When less than 90 percent of a family's unadjusted income consists of fixed income:

OHA will apply a COLA to each of the family's sources of fixed income.

All other income will be verified using third-party verification as outlined in Notice PIH 2023-27 and Chapter 7 of this policy.

In the following circumstances, regardless of the percentage of income received from fixed sources, OHA will obtain third-party verification as outlined in Notice PIH 2023-27 and Chapter 7 of this policy:

Of all assets when net family assets exceed $50,000;

Of all deductions and allowances from annual income;

If a family member with a fixed source of income is added;

If verification of the COLA or rate of interest is not available;

During the intake process and at least once every three years thereafter.

7-I.D. VERIFICATION HIERARCHY [Notice PIH 2023-27]

When OHA does not use a streamlined determination of income or an income determination from a means-tested federal assistance program, HUD requires OHA to obtain third-party verification of:

- Reported family annual income;

- The value of net family assets when the net value exceeds $50,000 (as adjusted annually);
- Expenses related to deductions from annual income; and
- Other factors that affect the determination of adjusted income.

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general, HUD requires 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.

HUD developed a hierarchy that described verification documentation from most acceptable to least acceptable. OHA must demonstrate efforts to obtain third party verification prior to accepting self-certification except instances when self-certification is explicitly allowed. In order of priority, the hierarchy is:

- Highest: Level 6: Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Highest: Level 5: Up-front Income Verification (UIV) using a non-EIV system
- High: Level 4:
  - Written third-party verification from the source, also known as "tenant-provided verification"
  - Or EIV plus self-certification
- Medium: Level 3: Written third-party verification form
- Medium: Level 2: Oral third-party verification
- Low: Level 1: Self-certification (not third-party verification)

Each of the verification methods is discussed in subsequent sections below.

File Documentation
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.E. LEVEL 5 AND 6 VERIFICATION: 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 for a number of individuals. PHAs may use UIV sources before or during a family reexamination.

UIV will be used to the extent that these systems are available to OHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until OHA has independently verified the UIV information and the family has been granted the opportunity to contest any adverse findings through the PHA's informal review/hearing processes.

Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System
PHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during annual and streamlined reexaminations of family composition and income in accordance with 24 CFR 5.236 and Notice PIH 2023-27.

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families.

The income validation tool (IVT) in EIV provides projections of discrepant income for wages, unemployment compensation, and SSA benefits pursuant to HUD's data sharing agreements with other departments.

The following policies apply to the use of HUD's EIV system.

EIV Income and IVT Reports
PHAs are required to obtain an EIV Income and IVT report for each family any time OHA conducts an annual reexamination. However, OHA is not required to use the EIV Income and IVT reports:

- At annual reexamination if OHA used Safe Harbor verification from another means-test federal assistance program to determine the family's income; or
- During any interim reexaminations.

The EIV Income and IVT Reports are also not available for program applicants at admission. When required to use the EIV Income Report, in order for the report to be considered current, OHA must pull the report within 120 days of the effective date of the annual reexamination.

The EIV Income Report may be used to verify and calculate income at annual reexamination if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information in EIV.

OHA Policy
Except for when Safe Harbor verification from another means-tested federal assistance program is used to determine the family's annual income, OHA will obtain EIV Income and IVT reports for all annual reexaminations for all families on a monthly basis. Reports will be generated as part of the regular reexamination process. OHA will ensure that all EIV Income Reports are pulled within 120 days of the effective date of the annual reexamination.

Income and IVT reports will only be used for interim reexaminations as necessary. For example, EIV may be used to verify that families claiming zero income are not receiving income from any sources listed in EIV.

Income and IVT reports will be retained in resident files with the applicable annual documents or interim reexamination documents (if applicable) for the duration of tenancy.

When OHA determines through EIV reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

New Hires Report [Notice PIH 2023-27]

The New Hires Report identifies participant families who have new employment within the last six months. The report is updated monthly.

OHA must review this information at annual reexamination except when OHA uses Safe Harbor verification from another means-tested federal assistance program to determine the family's income.

PHAs that do not require families to undergo interim reexaminations for earned income increases after an interim decrease are not required to review this report between a family's annual reexamination. If OHA requires an interim for increases in earned income after an interim decrease, then OHA must review the report quarterly after the family's interim decrease.

OHA Policy

In accordance with OHA policies in Chapter 9, OHA does not process interim reexaminations for families who have increases in earned income. Except for instances in which OHA uses Safe Harbor income determinations to determine a family's annual income, OHA will only review the New Hires Report at annual reexamination.

No Income Reported by HHS or SSA Report

This report is a tool for PHAs to identify participants who passed the SSA identity test, but no income information was reported by either HHS or SSA records. This scenario does not mean that they tenant does not have any income. PHAs obtain written, third-party verification of any income reported by the tenant. OHA must identify in its policies and procedures when this report will be pulled [Notice PIH 2023-27].

OHA Policy

OHA will generate the No Income Reported by HHS or SSA Report quarterly and will retain the report.

OHA will re-verify the status of tenants identified on the report quarterly. Based on the information provided by the family and in EIV, the PHA may require that family members provide verifications or sign release forms in order to obtain additional verification.

When OHA determines through this report and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

EIV Identity Verification Report

The EIV system verifies resident identities against Social Security Administration (SSA) records. These records are compared to HUD data for a match on social security number, name, and date of birth.

OHA is required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2023-27].

When identity verification for a resident fails, a message will be displayed within the EIV system and no income information will be displayed.

OHA Policy

OHA will identify residents whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

OHA will attempt to resolve discrepancies by obtaining appropriate documentation from the tenant. When OHA determines that discrepancies exist as a result of OHA errors, such as spelling errors or incorrect birth dates, it will correct the errors promptly.

Deceased Tenants Reports [Notice PIH 2012-4 and Notice PIH 2023-27]

The Deceased Tenant Report identifies residents that have been reported by the SSA as deceased. OHA is required to review the report at least quarterly.

OHA Policy

OHA will review the Deceased Tenants Report on a monthly basis.

When the Deceased Tenants Report identifies an individual as being deceased, PHAs must immediately send a letter to the head of household or emergency contact person (if the head of household is deceased and there is no other adult household member) to confirm the death of the listed household member. The PHA must conduct a home visit to determine if anyone is residing in the unit.

OHA is required to list the move-out date for the family as of the date on which the family or designee of the deceased tenant's estate returned the keys and signed a vacate notice; the date the public housing lease was terminated; or the date OHA legally regained possession of the unit, whichever occurs first.

When the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for continued occupancy. OHA may not designate the live-in aide as the new head of household or change the relation code on the Form HUD-50058.

Other EIV Reports [Notice PIH 2023-27]

OHA is required to review the Multiple Subsidy Report at least quarterly and the Failed EIV Pre-Screening and Failed Verification (Failed SSA Identity Test) reports at least monthly.

Upfront Income Verification Using Non-HUD Systems

HUD encourages PHAs to utilize other upfront verification sources such as the Work Number and web-based state benefits systems.

OHA Policy

OHA will inform all applicants and residents of its use of any non-HUD UIV resources:

7-I.F. LEVEL 4 VERIFICATION [Notice PIH 2023-27]

HUD identifies two types of Level 4 verification: written-third party verification from the source and EIV + self-certification.

EIV + Self-Certification

EIV may be used as written third-party verification and may be used to calculate income if the family agrees with the information in EIV and self-certifies that the amount is accurate and representative of current income. This practice is known as *EIV + self-certification*. When calculating income using this method, OHA may use its discretion to determine which method of calculation is reasonable: the last four quarters combined or an average of any number of quarters. The family must be provided with the information from EIV.

OHA Policy

At annual reexamination, if OHA is unable to use a determination of income from a means-tested federal assistance program and if there are no reported changes to an income source, OHA will use EIV + self-certification as verification of employment income, provided the family agrees with the amounts listed in EIV.

OHA will use an average of the last two quarters of income listed in EIV to determine income from employment. OHA will provide the family with the information in EIV. The family will be required to sign a self-certification stating that the amount listed in EIV is accurate and representative of current income. If the family disagrees with the amount in EIV, the amount is not reflective of current income, or if less than two quarters are available in EIV, OHA will use written third-party verification from the source as outlined below.

OHA will not use this method of verification at new admission since EIV is not available for applicant families or at interim reexamination since the income information in EIV is not current.

Written Third-Party Verification from the Source

Written, third-party verification from the source is also known as "tenant-provided verification." In order to qualify as written-third party verification from the source, the documents must be original or authentic and (generally) dated within 120 days of the date received by OHA. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation. Documents may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

OHA is required to obtain, at minimum, two current and consecutive pay stubs when calculating income using third-party verification from the source. For new income sources or when two pay stubs are not available, OHA should determine income based on the information from a traditional written, third-party verification form or the best available information.

When the family disputes EIV-reported employment income, OHA uses written third-party verification.

When verification of assets is required, PHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

OHA Policy

In general, OHA will use third-party verification from the source in the following circumstances:

At annual reexamination when EIV + self-certification is not used;
For all new admissions; and
For all interim reexaminations.

OHA will not use this method if OHA is able to use an income determination from a means-tested federal assistance program or if OHA uses EIV + self-certification as outlined above.

In general, third-party documents provided by the family or the source must be dated within 120 days of the date received by OHA. However, for fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

OHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible. If OHA determines that third-party documents provided by the family are not acceptable, OHA will explain the reason to the family and request additional documentation from the family or will use a lower form of verification such as a written third-party verification form.

When verification of assets held by a banking or financial institution is required, OHA will obtain one statement that reflects the current balance of the account.

When pay stubs are used, OHA will require the family to provide the two most current, consecutive pay stubs. At OHA's discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), OHA may request additional paystubs or a payroll record.

7-I.G. LEVEL 3 VERIFICATION: WRITTEN, THIRD-PARTY FORM [Notice PIH 2023-27]

This type of verification is a form developed by OHA and used uniformly for all families when needed to collect information from a third-party source. This is known as "traditional third-party verification." PHAs send a PHA-developed form directly to the third-party source by mail, fax, or email and the source completes the form by hand (in writing or typeset).

OHA may use this method when higher forms are unavailable or are rejected by OHA or when the family is unable to provide acceptable verification. OHA may skip this level of verification and may instead substitute oral third-party verification before moving to self-certification.

OHA Policy

Typically, OHA will attempt to send written third-party verification forms to the verification source whenever higher forms of verification are unavailable.

However, on a case-by-case basis, OHA may choose to obtain oral third-party verification without first attempting, and in lieu of, a written-third party verification form.

7-I.H. LEVEL 2: ORAL THIRD-PARTY VERIFICATION [Notice PIH 2023-27]

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

OHA must document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

OHA may skip this level of verification if they attempted written third-party verification via a form and the source did not respond and move directly to self-certification.

OHA Policy

In general, OHA will attempt to obtain written third-party verification via a form from the verification source. If written third-party verification forms are not returned within 10 business days, OHA will accept self-certification from the family without attempting to obtain oral third-party verification.

However, if OHA chooses to obtain oral third-party verification, OHA will document in the file the date and time of the telephone call or visit, the name of the person contacted and the telephone number, as well as the information confirmed.

When Third-Party Verification is Not Required [Notice PIH 2023-27]

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

OHA Policy

If the family cannot provide original documents, OHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a

self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

Primary Documents

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

7-I.I. LEVEL 1: NON-THIRD-PARTY VERIFICATION TECHNIQUE: SELF-CERTIFICATION [Notice PIH 2023-27]

Non-third-party verification consists of a signed statement of reported income and/or expenses. This verification method should be used as a last resort when OHA has not been successful in obtaining information via all other required verification techniques.

Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded;
- Net family assets total $50,000 or less and OHA has adopted a policy to accept self-certification;
- The family declares that they do not have any present ownership in any real property;
- A family states that they have non-recurring income that will not be repeated in the coming year; and/or
- OHA has adopted a policy to implement streamlined annual recertifications for fixed sources of income.

When OHA was required to obtain third-party verification but instead relies on self-certification, the family's file must be documented to explain why third-party verification was not available.

HUD does not require that a self-certification be notarized; however, HUD recommends including language on any self-certification to ensure the certifier understands the consequences of knowingly providing false information.

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 will include the following language:

"I/We, the undersigned, certify under penalty of perjury that the information provided here is true and correct, to the best of my knowledge and recollection. WARNING: Anyone who knowingly submits a false claim or knowingly makes a false statement is subject to criminal and/or civil penalties, including confinement for up to five years, fines, and civil and administrative penalties (18 U.S.C. 287, 1001, 1010, 1012; 31 U.S.C. 3279, 3802)."

PART II: 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.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicle identification card U.S. military discharge (DD 214) Current U.S. passport Current government employer identification card with picture	Certificate of birth Adoption papers Custody agreement Health and Human Services ID Certified school records

If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at OHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to OHA and be signed by the family member whose information or status is being verified.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where OHA has reason to doubt the identity of a person representing themselves to be a tenant or a member of a tenant family.

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and Notice PIH 2023-27]

The family must provide documentation of a valid Social Security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include, existing residents who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

OHA must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

While PHAs must attempt to gather third-party verification of SSNs prior to admission as listed above, PHAs also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if OHA has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, OHA must document why the other SSN documentation was not available.

If the tenant's SSN becomes verified in EIV, then no further verification is required. If the tenant's SSN fails the SSA identity match, then OHA must obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.

OHA Policy

OHA will verify an individual's SSN in the situations described above using the method described above as a last resort when no other forms of verification of the individual's SSN are available.

OHA may only reject documentation of an SSN provided by an applicant or resident if the document is not an original document, if the original document has been altered, mutilated, is illegible, or if the document appears to be forged.

OHA Policy

OHA will explain to the applicant or resident the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to OHA within 90 days.

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of program admission, an otherwise eligible family may be admitted and must provide documentation of the child's SSN within 90 days. A 90-day extension will be granted if OHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control.

OHA Policy

OHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a resident requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the resident must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. OHA may not add the new household member until such documentation is provided.

When a resident requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the resident must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if OHA determines that the resident's failure to comply was due to

unforeseen circumstances and was outside of the resident's control. During the period OHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

OHA Policy

OHA will grant one additional 90-day extension if needed for reasons beyond the resident's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during continuously assisted occupancy.

OHA Policy

OHA will verify each disclosed SSN by:

Obtaining documentation from applicants and residents that is acceptable as evidence of social security numbers

Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

Once the individual's verification status is classified as "verified," OHA may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

OHA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, OHA will not remove and destroy copies of documentation accepted as evidence of social security numbers.

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.

Age must be verified only once during continuously assisted occupancy.

7-II.D. FAMILY RELATIONSHIPS

Applicants and tenants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

OHA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage

OHA Policy

Certification by the head of household is normally sufficient verification. If OHA has reasonable doubts about a marital relationship, OHA will require the family to document the marriage with a marriage certificate or other documentation to verify that the couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

Separation or Divorce

OHA Policy

Certification by the head of household is normally sufficient verification. If OHA has reasonable doubts about a divorce or separation, OHA will require the family to provide documentation of the divorce or separation with a certified copy of a divorce decree, signed by a court officer; a copy of a court-ordered maintenance or other court record; or other documentation that shows a couple is divorced or separated.

If no court document is available, documentation from a community-based agency will be accepted.

Absence of Adult Member

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), if OHA so requests.

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 their 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' Web site at www.os.dhhs.gov.

OHA may make the following inquiries, provided it makes them of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiry about whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiry about whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

Verification of receipt of disability benefits from the Social Security Administration (SSA) is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions [VG, p. 23].

OHA Policy

For family members claiming disability who receive disability payments from the SSA, OHA will attempt to obtain information about disability benefits through HUD's Enterprise Income Verification (EIV) system. If documentation is not available through HUD's EIV system, OHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If a family member is unable to provide the document, OHA will ask the family to obtain a benefit verification letter either by calling SSA at 1-800-772-1213 or by requesting one from www.ssa.gov. Once the family receives the benefit verification letter, they will be required to provide the letter 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 5.403, 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 not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. See the Eligibility chapter for detailed discussion of eligibility requirements. This chapter (7) discusses HUD and PHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy [24 CFR 5.508(g)(5)]

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

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 7-1 at the end of this chapter summarizes documents family members must provide.

PHA Verification [HCV GB, pp 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this ACOP. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, OHA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).
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 that determined their placement on the waiting list.

OHA Policy

OHA offers a preference for working families, described in Section 4-III.B.

OHA may verify that the family qualifies for the working family preference based on the family's submission of the working member's most recent paycheck stub indicating that the working member works at least 20 hours per week. The paycheck stub must have been issued to the working member within the last thirty days.

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 also offers a preference for victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking as described in Section 4-III.B. To verify that applicants qualify for the preference, OHA will follow documentation requirements outlined in Section 16-VII.D.

PART III: VERIFYING INCOME AND ASSETS

Chapter 6 of this ACOP describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any income reported by the family must be verified. This part provides OHA policies that supplement the general verification procedures specified in Part I of this chapter.

OHA Policy

The following policies do not apply when OHA uses a safe harbor income determination from a means-tested federal assistance program.

7-III.A. EARNED INCOME

Tips

OHA Policy

Unless tip income is included in a family member's W-2 by the employer or in UIV verification sources, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year or tips anticipated to be received in the coming year.

Wages

OHA Policy

When OHA requires third-party verification of wages, for wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

OHA must obtain written, third-party verification when the income type is not available in EIV. This includes income from self-employment.

OHA Policy

Business owners and self-employed persons will be required to provide:

Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.). If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

For self-employed individuals who claim they do not have to file tax returns, OHA will obtain a completed copy of IRS Form 4506-T to verify that no return has been filed.

For those employed in "gig employment" (i.e., those in formal agreements with on-demand companies such as Uber, Lyft, or DoorDash), OHA will provide a format for the individual to declare their income and expenses. OHA will also review the printed statement of monthly income from the applicable app for all hours worked and pay received as well as Schedule C of the individual's tax return and the corresponding IRS Form 1099 or 1099k.

OHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy

at all future reexaminations. At any reexamination 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

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 9.

Social Security/SSI Benefits

Verification requirements for Social Security (SS) and Supplemental Security Income (SSI) benefits differ for applicants and participants.

For applicants, since EIV does not contain SS or SSI benefit information, OHA must ask applicants to provide a copy of their current SS and/or SSI benefit letter (dated within the last 120 calendar days) for each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, OHA should help the applicant request a benefit verification letter from SSA's website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. OHA must obtain the original benefit letter from the applicant, make a photocopy of the document for the file, and return the original to the family.

For participants, OHA must obtain information through the HUD EIV system and confirm with the participants that the current listed benefit amount is correct.

- If the participant agrees with the amount reported in EIV, OHA must use the EIV-reported gross benefit amount to calculate annual income from Social Security. PHAs are required to use the EIV-reported SS and SSI benefit amounts when calculating income unless the tenant disputes the EIV-reported amount. For example, an SSA benefit letter may list the monthly benefit amount as $450.80 and EIV displays the amount as $450.00. OHA must use the EIV-reported amount unless the participant disputes the amount.
- If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in EIV, OHA must request a current SSA benefit verification letter (dated within the last 120 calendar days) from each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, OHA should help the participant request a benefit verification letter from SSA's website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. OHA must obtain the original benefit letter from the participant, make a photocopy of the document for the file, and return the original to the family.
- Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits.

7-III.D. ALIMONY OR CHILD SUPPORT [Notice PIH 2023-27]

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family's child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family.

OHA Policy

The methods OHA will use to verify alimony and child support payments differ depending on whether the family declares that it receives regular payments.

If the family declares that it ***receives regular payments***, verification will be obtained in the following order of priority:

Copies of the receipts and/or payment stubs for the 12 months prior to OHA request

Third-party verification form from the state or local child support enforcement agency

Third-party verification form from the person paying the support

Family's self-certification of amount received

Note: Families are not required to undertake independent enforcement action.

7-III.E. NONRECURRING INCOME [Notice PIH 2023-27]

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. PHAs may accept a self-certification from the family stating that the income will not be repeated in the coming year.

OHA Policy

OHA will accept self-certification from the family stating that income will not be repeated in the coming year. However, OHA may choose, on a case-by-case basis, to require third-party verification that income sources will not be repeated in the coming year.

7-III.F. ASSETS AND INCOME FROM ASSETS

Net Family Assets [24 CFR 5.603]

At admission and reexam, for families with net assets totaling $50,000 or less (adjusted annually), OHA may, but is not required to, accept the family's self-certification that the family's assets do not exceed $50,000 without taking any additional steps to verify the accuracy of the declaration. The declaration must include the amount of income the family expects to receive from assets which must be included in the family's income. This includes declaring income from checking and savings accounts which, although excluded from the calculation of net family assets (because the combined value of non-necessary personal property does not exceed $50,000), may generate asset income. OHA must clarify during the self-certification process which assets are included/excluded from net family assets.

For PHAs that choose to accept self-certification, the PHA is required to obtain third-party verification of all assets, regardless of the amount, at least once every three years.

PHAs who choose not to accept self-certifications of assets must verify all families' assets on an annual basis.

When net family assets have a total value over $50,000, OHA may not rely on the family's self-certification. Third-party verification of assets is required when net family assets exceed $50,000, adjusted annually by HUD.

When verification of assets is required, OHA is required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

OHA Policy

For families with net assets totaling $50,000 or less, OHA will accept the family's self-certification of the value of family assets and anticipated asset income. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration. OHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question. Any income the family expects to receive from assets will be included in the family's annual income. The family will be required to provide third-party verification of net family assets every three years.

When verification is required, in determining the value of checking or savings accounts, OHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account when verification is required and the rate of return is known, OHA will multiply the current balance of the account by the current rate of interest paid on the account. If a checking account does not bear interest, the anticipated income from the account is zero.

Self-Certification of Real Property Ownership [24 CFR 5.618(b)(2)]

OHA must determine whether a family has present ownership in real property that is suitable for occupancy for purposes of determining whether the family is compliant with the asset limitation described in Chapters 3 and 13. At admission and reexam, OHA may accept a self-certification from the family that the family does not have any present ownership in any real property that is suitable for occupancy. If the family declares they have present ownership in real property, OHA must obtain third-party verification.

OHA Policy

Both at admission and reexam, OHA will accept self-certification from the family that the family does not have any present ownership in any real property. The certification will state that the family does not have any present ownership interest in any real property and must be signed by all family members 18 years of age and older. OHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question.

If the family declares they have a present ownership in real property, OHA will obtain third-party verification of the following factors: whether the family has the legal right to reside in the property; whether the family has effective legal authority to sell the property; and whether the property is suitable for occupancy by the family as a residence. However, in cases where a family member is a victim of domestic violence, dating violence, sexual

assault, or stalking, OHA will comply with confidentiality requirements under 24 CFR 5.2007 and will accept a self-certification.

7-III.G. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. HUD permits PHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28]. OHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

OHA Policy

OHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

OHA will verify 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.

Example 1: An elderly resident reported a $10,000 certificate of deposit at the last annual reexamination and the PHA verified this amount. Now the person reports that she has given this $10,000 to her son. The PHA has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary. Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately $5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the PHA will verify the value of this asset.

7-III.H. 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.I. FEDERAL TAX REFUNDS OR REFUNDABLE TAX CREDITS [Notice PIH 2023-27]

PHAs are not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below $50,000 (adjusted annually for inflation), even in years when full verification of assets is required or if the PHA does not accept self-certification of assets. PHAs must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than $50,000.

7-III.J. RETIREMENT ACCOUNTS

OHA Policy

OHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

7-III.K. INCOME FROM EXCLUDED SOURCES [Notice PIH 2023-27]

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, OHA is **not** required to verify the income using third-party verification, document why third-party verification is not available, or report the income on the 50058. *Fully excluded income* is defined as income where the entire amount qualifies to be excluded from the annual income determination in accordance with 24 CFR 5.609(b) and any *Federal Register* notice on mandatory exclusions issued by HUD (for example, food stamps, earned income of a minor, or foster care funds).

PHAs may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, PHAs have the option of requiring additional verification.

For partially excluded income, OHA **is** required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student).

OHA Policy

OHA will accept the family's self-certification as verification of fully excluded income. OHA may request additional documentation if necessary to document the income source. OHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

7-III.L. ZERO INCOME REVIEWS [Notice PIH 2023-27]

A *zero income review* is an assessment, sometimes periodic, performed by OHA of the income of a family who claims that they do not receive income from any source, including from assets. During such reviews, it is common for PHAs to request that families complete and sign a worksheet explaining how they pay for the household's expenses. HUD does not require PHAs to conduct periodic zero income reviews. In calculating annual income, PHAs must not assign monetary value to nonmonetary in-kind donations from a food bank or similar organization received by the family [24 CFR 5.609(b)(24)(vi)]. PHAs that perform zero income reviews must update local discretionary policies, procedures, and forms. Families who begin receiving income which does not trigger an interim reexamination should no longer be considered zero income even though the family's income is not reflected on the Form HUD-50058.

OHA Policy

OHA will check UIV sources and/or may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, earned income, child support, etc. are not being received by families claiming to have zero annual income.

OHA will also require that each family member who claims zero income status complete a zero income form. If any sources of income are identified on the form, OHA will verify the income in accordance with the policies in this chapter prior to including the income in the family's annual income.

OHA will only conduct interims in accordance with OHA policy in Chapter 9.

7-III.M. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9)]

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. Any assistance to students under section 479B of the Higher Education Act of 1965 (Tile IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the federally mandated income exclusions are excluded [24 CFR 5.609(b)(9)(ii)].

OHA Policy

OHA will request written third-party verification of both the source and the amount of student financial assistance. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, unless the student's only source of assistance is assistance under Title IV of the HEA, OHA will request written verification of the cost of the student's tuition, books, supplies, room and board, and other required fees and charges to the student from the educational institution.

If OHA is unable to obtain third-party written verification of the requested information, OHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

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 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 for a discussion of the deduction. OHA will verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

7-IV.B. HEALTH AND MEDICAL CARE EXPENSE DEDUCTION

Policies related to medical expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

OHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed health and medical care expenses. OHA may not request documentation beyond what is sufficient to determine anticipated health and medical care costs. Before placing bills and documentation in the tenant file, OHA must redact all personally identifiable information [FR Notice 2/14/23].

Amount of Expense

OHA Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts.

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.

Written third-party verification forms if the family is unable to provide acceptable documentation.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

Before placing bills and documentation in the tenant file, OHA will redact all personally identifiable information.

If OHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, OHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, OHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will OHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

In addition, OHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified health and medical care expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

Eligible Household

The health and medical care expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62 or a person with disabilities. 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 health and medical care expense deduction, the costs must qualify as medical expenses. See Chapter 6 for OHA's policy on what counts as a medical expense.

Unreimbursed Expenses

To be eligible for the health and medical care expense deduction, the costs must not be reimbursed by another source.

OHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

Expenses Incurred in Past Years

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.

OHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed auxiliary apparatus or attendance care costs. OHA may not request documentation beyond what is sufficient to determine anticipated reasonable attendant care and auxiliary apparatus costs. Before placing bills and documentation in the tenant file, OHA must redact all personally identifiable information [FR Notice 2/14/23].

Amount of Expense

Attendant Care

OHA Policy

Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or cancelled checks.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Before placing bills and documentation in the tenant file, OHA will redact all personally identifiable information.

If OHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, OHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, OHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will OHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

Auxiliary Apparatus

OHA Policy

Expenses for auxiliary apparatus will be verified through:

Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, 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 Chapter 6.).
- The expense is not reimbursed from another source (as described in Chapter 6.).

Family Member is a Person with Disabilities
To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. 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 request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

Unreimbursed Expenses
To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

OHA Policy
The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, OHA must verify that:

- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.

- The costs are for an allowable type of child care.
- The costs are reasonable.

Eligible Child
To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. 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 family and the care provider will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

Pursuing an Eligible Activity
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 family-provided 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 request third-party documentation to verify that the person permitted to further their education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

Gainful Employment
OHA will seek third-party verification of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could

be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

OHA Policy

OHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6.

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 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: Summary of Documentation Requirements for Noncitizens [HCV GB, pp. 5-9 and 5-10)

- **All** noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to OHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

Elderly Noncitizens

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
• Form I-94 Arrival-Departure Record annotated with one of the following:
  • "Admitted as a Refugee Pursuant to Section 207"
  • "Section 208" or "Asylum"
  • "Section 243(h)" or "Deportation stayed by Attorney General"
  • "Paroled Pursuant to Section 221 (d)(5) of the USCIS"
	• Form I-94 Arrival-Departure Record with no annotation accompanied by:
	  • A final court decision granting asylum (but only if no appeal is taken);
	  • A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
	  • A court decision granting withholding of deportation; or
	  • A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

• Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210".	Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".

- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*

CHAPTER 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 three 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 and notifying families of HUD REAC NSPIRE inspections..

Part III Use of Space License Agreement **or** Leasing Units to OHA Police Officers and Maintenance Workers: This part describes OHA's policy pertaining to leasing units to police officers and OHA employed maintenance workers under a Use of Space License Agreement. [24 CFR 960.505

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 if the tenant meets annual eligibility and recertification requirements.[24 CFR 966.4(a)(2)]

PHAs must adopt smoke-free policies, which HUD required to be implemented no later than July 30, 2018. The policy is attached as Exhibit 8-1.

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, an OHA representative will provide a lease orientation to the family. The head of household or spouse is required to attend.

Orientation Agenda

When families attend the lease orientation, they will be provided with a copy of the following:

- The lease and addenda
  A. OHA's grievance procedure
  B. House Rules
  C. Mold Notification
  D. Lead Based Paint Disclosure
  E. Pest Control
  F. Animal Policy Addendum
  G. Schedule of Maintenance Fees
  H. Parking Policy
  I. Drug-Free Environment Tenant Agreement
  J. Community Service Eligibility Form
  K. Flat Rent Notification and Election Form
  L. Accessible Unit Notifications
  M. Unlawful Activities
  N. Satellite Dish
  O. Information about the protections afforded by the Violence Against Women Reauthorization Act (VAWA) including HUD Form 5380, Notice of Occupancy Rights under VAWA, and HUD Form 5382, Self-Certification. Include explanation that these are provided to all applicants, does not indicate a VAWA related request has been made.
  P. Smoke-Free Public Housing Policy

- The Protect Your Family From Lead in Your Home pamphlet
- Is Fraud Worth It? (form HUD-1141-OIG)
- What You Should Know about EIV,
- Green Clean Kit

Topics to be discussed will include:

- Review and explanation of lease provisions and each addenda listed above
- Applicable deposits and other fees
- Unit maintenance and work orders (maintenance fees and inspections)
- OHA's reporting requirements (household changes and lease compliance)
- Explanation of occupancy forms
- Community service requirements
- Family choice of rent

- Integrated Pest Management
- Green Clean Kit

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. All current lease non-compliance issues and active lease compliance agreements will be transferred to the new lease, including but not limited to past due rent repayment agreements.

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 co-head, and all other adult members of the household will be required to sign the public housing lease prior to admission. An appointment will be scheduled for the parties to execute the lease. The head of household will be provided a copy of the executed lease and OHA will retain a copy in the resident's file. Any family member that turns 18 during the lease term will be required to sign the current lease within 30 days of date of birth.

Files for households that include a live-in aide will contain file documentation signed by the live-in aide stating 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. The live-in aide will be required to comply with all house rules.

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

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 OHA Board of Commissioners, each family must be notified at least 30 days in advance of the effective date of the new lease or lease revision. A resident's refusal to accept permissible and reasonable lease modifications that are made in accordance with HUD requirements, or are required by HUD, is grounds for termination of tenancy [24 CFR 966.4(l)(2)(iii)(E)].

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 maintenance and administrative fees 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 (30) 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 will be posted on the agency website, as well as in the property management office. Comments received within the thirty (30) days 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, on the agency website, and must be furnished to applicants and tenants on request [24 CFR 966.5]. Any notice changing the terms of tenancy for a current tenant will be served in compliance with Code of Civil Procedure section 1162 and/or Civil Code section 827.

OHA Policy
When OHA proposes to modify or revise schedules of maintenance and administrative fees rules, policies and/or regulations, OHA will post a copy of the at each leasing office, OHA website and will mail a notification of the change to each resident family. OHA will maintain proper documentation of the notice for maintenance fees.

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 sign 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 sign and date the change. If the new member of the household is an adult, he or she 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)]

Tenant shall pay a security deposit of two hundred fifty dollars ($250.00) and this amount must be paid in full prior to occupancy unless a financial hardship exists as defined in Section 6-III.B. OHA may use the security deposit upon termination of the lease or rental agreement for any purpose permitted under California law.

OHA Policy

Residents must pay a security deposit to OHA at the time of admission.

OHA will hold the security deposit for the period the family occupies the unit. 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 process the security deposit based on the maintenance charges incurred on the "old" unit. A new security deposit will be required for the "new" 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 an 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.

Posting of Payments.

All payments made to OHA by the family are processed using an automated system that processes bulk processing and posting of all rent payments, therefore all payments, without regard to notations on the physical payment instrument, will be posted in the following order:

1. Security deposit
2. Services
3. Other charges (NSF, Late, legal fees)
4. Past Due Rent
5. Current Month's Rent

Late Fees and Nonpayment

OHA's lease will include a penalty when the family is late in paying tenant rent. Penalties for late payments will be issued as stated below [24 CFR 966.4(b)(3)].

OHA Policy

Rent is due on the first (1st) of every month, and it is considered late on the second (2nd). If a tenant fails to pay rent by the tenth (10th) day of the month, a 14 day Notice to Pay Rent or Quit will be issued to the tenant. A fifteen-dollar (15.00) late charge will be assessed if rent is not received by the tenth (10th) day of the month. Partial payments that do not cover all rent owed shall result in a $15.00 late fee charged to the tenant.

OHA will charge $15.00 for late fee for rent payments not received by the fifth day of the month.

Payments made that do not cover all the rent owed (partial payments) shall result in a $15.00 late fee charged on the next rental statement as provided for in the lease or rental agreement.

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 $15.00 will be charged to the family. Any resident with a payment returned for insufficient funds will be required to pay their rent with money order or cashier's check for a period of 12 months.

Excess Utility Charges

If OHA charges the tenant for consumption of excess utilities, the lease must state the basis or the determination of such charges. The imposition of charges for consumption of excess utilities is permissible only if the charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances [24 CFR 966.4(b)(2)]. Schedules of special charges for utilities that are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for excess utility consumption are not due and collectible until two weeks after 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 to 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 excess utility usage according to OHA's current posted schedule. Notices of excess utility charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after written notice is provided to the tenant. If the family requests a grievance hearing within the required timeframe, OHA may not take action for nonpayment of the charges until the conclusion of the grievance process. Nonpayment of excess utility charges is a violation of the lease and is grounds for eviction.

Maintenance and Damage Fees

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 maintenance fees 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 AMP administrative office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that fees for maintenance and repair beyond normal wear and tear are not due and collectible until two weeks after OHA gives written notice of the fees. 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 maintenance fee 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 fees charged will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Payment of fees are due and payable 30 calendar days after billing. If the family requests a grievance hearing within the required timeframe, OHA may not take action for nonpayment of the maintenance and damage fees charged 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

OHA is obligated to maintain safe and habitable dwelling units and to make necessary repairs to dwelling units [24 CFR 966.4(e)]. The National Standards for the Inspection Physical Inspection of Real Estate (NSPIRE) are the standard under which HUD housing units, including those under the public housing program, are inspected. NSPIRE ensures that residents of public housing live in safe, habitable dwellings, and the items and components located inside, outside, and within the units are functionally adequate, operable, and free of health and safety hazards [24 CFR 5.703(a)]. Further, units must comply with state and local code requirements (such as fire, mechanical, plumbing, carbon monoxide, property maintenance, and residential code) [24 CFR 5.703(f)] as well as with all requirements related to the evaluation and control of lead-based paint hazards [24 CFR 5.703(e)(2)].

Under NSPIRE, public housing units are subject to three types of inspections: annual self-inspections, NSPIRE Inspections (which are used to assess and score OHA under the Public Housing Assessment System (PHAS)), and NSPIRE Plus Inspections (which are triggered by poor property conditions). HUD rules also require OHA to inspect each public housing unit prior to move-in and at move-out. OHA may require additional inspections, in accordance with OHA Policy. This part contains OHA's policies governing inspections by OHA and HUD, notification of unit entry, and inspection repair timelines. This section discusses inspections conducted by OHA (including annual self-inspections) and inspections conducted by HUD REAC.

8-II.B. TYPES OF OHA-CONDUCTED INSPECTIONS

OHA is obligated to maintain dwelling units and the project in safe and habitable condition and to make necessary repairs to dwelling units [24 CFR 966.4(e)].

Types of OHA-Conducted Inspections

Move-In Inspections [24 CFR 966.4(i)]

The lease requires 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

Head of household must attend the move-in inspection and sign the inspection form.

Move-Out Inspections [24 CFR 966.4(i)]

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.

Self-Inspections [24 CFR 5.707]

Annually all PHAs are required to self-inspect their properties, including all units, to ensure units are maintained in accordance with NSPIRE standards in 24 CFR 5.703. As part of the self-inspection process, PHAs must ensure that deficiencies previously cited and repaired as a result of an NSPIRE inspection have not subsequently failed.
OHA must maintain the results of self-inspections for three years and must provide the results to HUD upon request.

Quality Control Inspections

The purpose of quality control inspections is to assure that all defects were identified in the original inspection, and that repairs were completed at an acceptable level of craftsmanship and within an acceptable time frame.

OHA Policy
Supervisory quality control inspections will be conducted in accordance with OHA's maintenance policies.

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 and routine maintenance
- There is reasonable cause to believe an emergency exists

Other Inspections

OHA Policy

Inside areas, outside areas, and units will be inspected according to NSPIRE, REAC standards and OHA's maintenance policies.

Notice of Entry

Non-emergency Entries [24 CFR 966.4(j)(1)]

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 24 hours before such entry is considered reasonable advance notification. Civil Code Section 1954 (d)(1).

OHA Policy

In accordance with state law, OHA will notify the resident in writing at least 24 hours prior to any non- emergency inspection.

For regular self- annual inspections, the family will receive at least 72 hours 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.

Except for emergencies, management will not enter the dwelling unit to perform inspections where a pet resides unless accompanied for the entire duration of the inspection by the pet owner or responsible person designated by the pet owner in accordance with the pet policies in Section 10-II.D.

Emergency Entries [24 CFR 966.4(j)(2)]

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 OHA-Conducted 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

The head of household 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

While the resident is required to be present for move-in inspections, the resident is not required to be present for other types of inspections. 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 notification of inspection in the unit.

OHA will not enter the unit when there are unsupervised minor children present.

Repairs

Correction timeframes differ depending on whether repairs are considered emergency or non-emergency repairs.

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. Under NSPIRE, OHA must correct all Life-Threatening and Severe deficiencies within 24 hours.

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 temporary alternative housing, rent shall be abated in proportion to the seriousness of the damage and loss in value as a dwelling. Rent shall not be abated if the damage was caused by a household member or guest, or if the resident rejects the alternative accommodations.

Non-emergency Repairs

OHA Policy
OHA will correct deficiencies resulting in a non-emergency work order identified during an OHA conducted inspection 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.) OHA will notify the family of an estimated date of completion.

The family must allow OHA access to the unit to make repairs.

Except for emergencies, management will not enter the dwelling unit to perform repairs where a pet resides unless accompanied for the entire duration of the repair by the pet owner or responsible person designated by the pet owner in accordance with the pet policies in Section 10-II.D.

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 Fees.

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 issue a pre-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/or carbon monoxide alarm. Only one warning will be given. A second incidence may result in lease termination.

8-II.C. NSPIRE INSPECTIONS [24 CFR 5.705(c); Notice PIH 2023-16]

During an NSPIRE inspection, REAC inspectors will inspect areas and associated items or components that are listed in the regulations as affirmative requirements and those included within the NSPIRE standards. For most properties, the frequency of NSPIRE inspections is determined by the date of the prior inspection and the score received.

Notice to Residents [Notice PIH 2023-16]

OHA must provide notice to all residents as described in 24 CFR 5.711(h) and the lease.

OHA Policy

OHA will provide all residents with at least seven days' notice of an NSPIRE inspection. Notice will be provided through multiple communication methods, including by posted notice on each resident's door and through email where applicable. All materials, notices, and communications to families regarding the inspection will be clearly communicated and provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act (Section 504) and HUD's Section 504 regulation, and Titles II or III of the Americans with Disabilities Act (ADA) and implementing regulations.

24-Hour Corrections [24 CFR 5.711(c); Notice PIH 2023-16]

At the conclusion of the NSPIRE inspection, or at the end of the day on multi-day inspections, HUD provides OHA with a list of Life-Threatening and Severe deficiencies. OHA must correct all Life-Threatening and Severe deficiencies within 24 hours, with certification of correction submitted to HUD within two business days of receipt of notification of the deficiency.

If permanent repair will take longer than the allowable time in the relevant standard for the deficiency, OHA must provide HUD with a timeframe for completing permanent repairs and submit evidence that the repair is in progress. Any extension to the allowable time for rectifying the deficiency is allowed only upon HUD approval for good cause.

OHA Policy

OHA will correct all Life-Threatening and Severe deficiencies within 24 hours. Correcting the deficiency means OHA will resolve or sufficiently address the deficiency in a manner that it no longer poses a severe health or safety risk to residents or the hazard is blocked until permanent repairs can be completed. A correction could include controlling or blocking access to the hazard by performing a temporary relocation of the resident while repairs are made.

While OHA will complete all repairs expeditiously, if a permanent repair is not possible within 24-hours, OHA will correct the deficiency by performing an interim repair to remove the health and safety hazard. If the correction is temporary or professional services or materials are unavailable within 24 hours, OHA will provide a target date for permanent correction. Such interim repairs will be fully completed within a reasonable timeframe approved by HUD.

The family must allow OHA access to the unit to make repairs.

Non-emergency Repairs

Under NSPIRE, OHA must correct Moderate deficiencies within 30 days and Low deficiencies within 60 days, or as otherwise provided in the NSPIRE standards. Repairs should be permanent fixes, unless otherwise approved by HUD in writing. HUD may also prescribe timelines in Corrective Action Plans as defined in 24 CFR 902.3 or Corrective Action Agreements as described in 24 CFR 902.105.

OHA Policy

If OHA is unable to make repairs within the periods identified in the NSPIRE standards due to circumstances beyond OHA's control (e.g., required parts or services are not available, weather conditions, etc.), OHA will provide HUD with a timeframe for completing permanent repairs and obtain HUD approval. OHA will also notify the family of an estimated date of completion.

The family must allow OHA access to the unit to make repairs.

Except for emergencies, management will not enter the dwelling unit to perform repairs where a pet resides unless accompanied for the entire duration of the repair by the pet owner or responsible person designated by the pet owner in accordance with the pet policies in Section 10-II.D.

PART III: SPECIAL OCCUPANCY IN PUBLIC HOUSING UNITS

8-III.A. LEASING PUBLIC HOUSING UNITS TO POLICE OFFICERS

HUD 24 CFR 960.505 allows special occupancy in public housing: For the purpose of increasing security for residents of a public housing development, OHA may allow police officers who would not otherwise be eligible for occupancy in public housing, to reside in a public housing dwelling unit. OHA must include in OHA annual plan or supporting documents the number and location of the units to be occupied by police officers, and the terms and conditions of their tenancies; and a statement that such occupancy is needed to increase security for public housing residents.

Definition:

Police officer. For purpose of this subpart E, ‘‘police officer’’ means a person determined by OHA to be during the period of residence of that person in public housing, employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments. An officer of an accredited police force of a housing agency may qualify.

OHA Policy

OHA will execute “Use of Space License Agreements” to qualified police officers for long and/or short term residency in OHA communities where the officers’ physical presence is expected to serve as a deterrent to criminal activity in and around the community**. 24 CFR 960.505**

There are a total of 2 units allocated for this purpose located at the Lockwood and Peralta Villa sites.

8-III.B. LEASING PUBLIC HOUSING UNITS TO MAINTENANCE WORKERS

OHA has set aside units to house maintenance workers to provide emergency repair.

EXHIBIT 8-1: SMOKE-FREE POLICY

In accordance with HUD regulations, the Housing Authority has adopted these smoke-free policies. The policies are effective as of Board approval date.

Due to the increased risk of fire, increased maintenance costs, and the known health effects of secondhand smoke, smoking is prohibited in all living units and interior areas, including but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures. Smoking is also prohibited in outdoor areas within 25 feet from public housing and administrative office buildings.

This policy applies to all employees, residents, household members, guests, and service persons. Residents are responsible for ensuring that household members and guests comply with this rule.

The term "smoking" means any inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other prohibited tobacco product in any manner or any form. Prohibited tobacco products include water pipes or hookahs.

Violation of the smoke-free policy constitutes a violation of the terms of the public housing lease. Consequences of lease violations include termination of tenancy.

OHA POLICIES

Designated Smoking Areas (DSA)

OHA has not designated any smoking areas on the PHA's property. Residents may not discard smoking products on the property.

Electronic Nicotine Delivery Systems (ENDS)

Electronic nicotine delivery systems (ENDS) include e-cigarettes, nicotine inhalers, and vaping devices.

Use of ENDS is permitted in public housing units only as a reasonable accommodation approved by the PHA that necessary for a person with disabilities. Use of ENDS is prohibited in common areas and in outdoor areas within 25 feet from housing and administrative buildings. That is, use of ENDS is prohibited in all areas in which smoking is prohibited.

Effective Date

OHA's effective date(s) of this smoke-free is/are as follows:

The smoke-free policy is effective for all residents, household members, employees, guests, and service persons as of July 18, 2018.

Residents must execute a smoke-free lease addendum as part of the annual lease renewal process. All residents must have been in compliance with the smoke-free policy as of July 30, 2018.

Enforcement

OHA must enforce smoke-free policies when a resident violates this policy. When enforcing the lease, OHA will provide due process and allow residents to exercise their right to an informal

settlement and formal hearing. OHA will not evict a resident for a single incident of smoking in violation of this policy. As such, OHA will implement a graduated enforcement framework that includes escalating warnings. Prior to pursuing eviction for violation of smoke-free policies, OHA will take specific, progressive monitoring and enforcement actions, while at the same time educating tenants and providing smoking cessation information. The lease will identify the actions that constitute a policy violation, quantify the number of documented, verified violations that warrant enforcement action, state any disciplinary actions that will be taken for persistent non-responsiveness or repeated noncompliance, and state how many instances of noncompliance will constitute a violation. Tenancy termination and eviction will be pursued only as a last resort. OHA may terminate tenancy at any time for violations of the lease and failure to otherwise fulfill household obligations if resident behavior disturbs other residents' peaceful enjoyment and is not conducive to maintaining the property in a decent, safe, and sanitary condition.

Repeated violation of the smoke-free policy may rise to the level of other good cause for termination of tenancy.

Reasonable Accommodation

While addiction to nicotine or smoking is not a disability, OHA will provide reasonable accommodation to persons with disabilities who smoke that are in compliance with the requirements of this smoke-free policy.

CHAPTER 9:

REEXAMINATIONS [24 CFR 960.257, 960.259, 966.4]

Under MTW Authority, OHA may adopt and implement reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. ***This authorization waives certain provisions of 24 CFR 960.257 and 960 Subpart B, as necessary to implement the Agency's Annual MTW Plan.***

MTW process and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard Public Housing rules and regulations apply

INTRODUCTION

With the exception of non-public housing over income families, OHA is required to reexamine each family's income and composition periodically, and to adjust the family's rent accordingly. OHA must adopt policies for conducting annual and interim reexaminations that are consistent with regulatory requirements and must conduct reexaminations in accordance with such policies [24 CFR 960.257(c)].

The frequency with which OHA must reexamine the income and composition of a family depends on whether the family pays income-based rent 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.

As a participant in the MTW program, OHA may alter reexamination requirements for wage earning families and/or elderly and disabled families on fixed incomes. These families may have their income reexamined every two or three years, depending on the source of income, instead of each year. Interim reexaminations are also needed in certain situations.

This chapter discusses both annual and interim reexaminations.

> Part I: Annual Biennial, and Triennial Reexaminations for Families Paying Income Based Rents. This part discusses the requirements for annual reexamination of income and family composition.. Annual reexaminations will be conducted for families that have reported "no income" or "non-wage income". Biennial reexaminations will be conducted for families that have reported at least one wage earning source and triennial reexaminations will be conducted for elderly and disabled families on fixed incomes.
>
> 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 three 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 describes the 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.

Part V: Non-Interim Reexamination Transactions. This part describes transactions that do not entail changes to the family's adjusted income.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this ACOP, apply to annual and interim reexaminations.

PART I: ANNUAL, BIENNIAL, TRIENNIAL REEXAMINATIONS FOR FAMILIES [24 CFR 960.257 as amended by MTW]

9-I.A. OVERVIEW

For those families who choose to pay income-based rent, OHA must conduct a reexamination of income, family composition, and related exceptions at least once every:

- Year (annual) for families who report no income, income from non-wage sources, mixed income from fixed sources, or families enrolled in Special Programs (FSS).
- Two years (biennial) for families that report at least one established income from wage earnings
- Three years (triennial) for elderly and disabled families receiving all income from a fixed source (Social security, Pension)

The chart found at Exhibit 9-1summarizes the alternative reexamination schedule.

All reexaminations include gathering and verifying current information about family composition, income, and expenses. Based on this updated information, OHA must recalculate the family's income and rent and offer flat rent.

With the exception of over-income families, who must have their income reviewed at 12 and 24 months, for flat rent families, OHA must conduct a reexamination of family composition at least annually and must conduct a reexamination of family income at least once every three years [24 CFR 960.257(a)(2)]. For any non-public housing over income families, OHA may not conduct an annual reexamination of family income. Policies related to the reexamination process for families paying flat rent are located in Part II of this chapter.

For all residents of public housing, whether those residents are paying income-based or flat rents, 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 for the purposes of lease enforcement or eviction.

OHA is required to obtain all of the information necessary 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].

Unlike when performing an interim reexamination or at intake, at annual reexamination, OHA must determine the income of the family for the previous 12-month period, except where OHA uses a streamlined income determination. Income from assets, however, is always anticipated, irrespective of the income examination type [Notice PIH 2023-27]. OHA also has the option of using a "safe harbor" income verification from another federal means-tested program to verify gross annual income. Chapter 7 contains OHA's policies related to streamlined income determinations and the use of safe harbor income verifications.

This part contains OHA's policies for conducting annual reexaminations.

9-I.B. SCHEDULING ANNUAL, BIENNIAL, AND TRIENNIAL REEXAMINATIONS

OHA must establish a policy to ensure that the reexamination for each family paying an income-based rent is completed within a 12 month period for non-wage earning families, a 24-month period for qualifying, wage earning families, and a 36-month period for elderly and disabled families on fixed incomes that qualify for triennial reexaminations.

OHA Policy

OHA will begin the reexamination process at least 60 days in advance of its scheduled reexamination effective date. Generally, OHA will schedule reexamination effective dates to coincide with the anniversary 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 also may schedule a reexamination for completion prior to the anniversary date for administrative purposes.

Notification of and Participation in the Regularly Scheduled Reexamination Process

OHA is required to obtain information needed to conduct reexaminations. How that information will be collected is left to the discretion of OHA. OHA will give tenants who were not provided the opportunity to provide contact information at the time of admission the option to complete Form HUD-92006 at this time. OHA will provide the family with the opportunity to update, change, or remove information from the HUD-92006 at the time of the annual reexamination [Notice PIH 2009-36].

Families are required to provide current and accurate information on income, assets, allowances deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

OHA Policy

OHA may elect not to require a family to attend a scheduled reexamination. A family that is not required to attend a scheduled interview must return to OHA the completed reexamination forms, required information and supporting documentation requested in the reexamination packet within the timeframe stated on the reexamination notice

Families generally are required to participate in a regularly scheduled reexamination interview, which must be attended by the head of household, spouse, or co-head. If attending an in-person interview poses a hardship because of a family member's disability, the family should contact OHA to request a reasonable accommodation (see Chapter 2).

Notification of scheduled reexamination interviews will contain the date, time, and location of the interview. The notification will be sent by first-class mail and will include a packet of required forms the family must complete and bring to the interview will be. In addition, the notice will inform the family of the information and supporting 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. 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, or if the notice is returned by the post office with no forwarding address, 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.

OHA may elect not to require a family to attend a scheduled reexamination. A family that is not required to attend a scheduled interview must return to OHA the completed reexamination forms, required information and supporting documentation requested in the reexamination packet within the timeframe stated on the reexamination notice.

9-I.C. CONDUCTING REGULARLY SCHEDULED REEXAMINATIONS

The terms of the public housing lease require the family to provide updated information regarding income, and family composition for the redetermination of rent, eligibility, and the appropriate size housing unit [24 CFR 966.4(c)(2)].

OHA Policy

Families will be asked to bring the completed reexamination forms and supporting documents requested in the reexamination packet to the scheduled interview.

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.

For families that were not required to attend a scheduled interview and are unable to provide all required documents and information by the date stated in the reexamination notice, a notice will be sent that the required documents and information must be provided within 10 business days of the date of the notice.

The family is required to report any and all changes prior to the effective date of the annual update and/or recertification. These changes include but are not limited to household composition, all household income and citizenship status.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

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

9-I.D. REEXAMINATIONS FOR FAMILIES PAYING INCOME-BASED OR FLAT RENTS [24 CFR 960.257(a)(2) and Notice PIH 2023-27]

OHA must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where OHA uses a streamlined income determination as indicated in Chapter 7 of this policy. OHA may also use Safe harbor income determinations dated within the last 12 months from a means-tested federal public assistance program at annual reexamination as outlined in Chapter 7 of this policy.

Except when using streamlined or safe harbor income determinations, in determining the income of the family for the previous 12-month period, any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination in accordance with OHA policies and 24 CFR 5.657(c) or 960.257(b) must be considered.

Income from assets is always anticipated, irrespective of the income examination type.

A change in income may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. OHA should look at the entirety of the family's unearned income and earned income from the prior year in which earned income may have been one constant job or many different jobs that start and stop.

Cost of Living Adjustments (COLA) to Social Security income and Social Security disability income are always considered changes to income because the COLA is an adjustment that automatically occurs annually by law. See Chapter 6 for OHA policies on when the COLA is applied and Chapter 7 on streamlined determination of income for inflationary adjustments.

Notice PIH 2023-27 lists the following steps to calculate both earned and unearned income at annual reexamination.

Step 1: OHA determines annual income for the previous 12-month period by reviewing the following information:

- The EIV Income Report pulled within 120 days of the effective date of the annual reexamination;
- The income reported on the most recent HUD-50058; and
- The amount of prior-year income reported by the family on OHA's annual reexamination paperwork.

Step 2: OHA takes into consideration any interim reexamination of family income completed since the last annual reexamination.

- If there was an interim reexamination performed, OHA must use the annual income from the interim to determine the family's total annual income, provided there are no additional changes.
- If OHA did not perform an interim or there have been changes since the last reexamination, OHA moves to Step 3.

Step 3: If there were changes in annual income not processed by OHA since the last reexamination, OHA must use current income. The family will be required to report their income for the prior year and whether there have been permanent changes.

If there are no reported changes to an income source, OHA may use documentation of prior-year income to calculate the annual income. For example, OHA may use the following documentation:

- EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- Current written third-party verification from the source verifying prior-year income that is dated within 120 days of receipt by OHA, for example:
  - Year-end statements
  - Paycheck with year-to-date amounts
  - Tax forms (Form 1040, W2, 1099, etc.)

If there are reported changes by the family or OHA notes discrepancies between EIV and what the family reports, OHA must follow the verification hierarchy (described in Chapter 7) to document and verify income. Exhibit 9-1 provides detailed examples of how OHA calculates income from different sources at annual reexamination using the above method.

OHA Policy

When income is calculated using a streamlined income determination or Safe Harbor determination from a means-tested federal public assistance program in accordance with OHA policies in Chapter 7, the above is not applicable. However, where the family

disagrees with OHA or other agency's determination of income or OHA has other reason to use third-party verification in these circumstances, then the above will apply.

9-I.E. OTHER CONSIDERATIONS

Change in Unit Size

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. 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.

Additionally, HUD recommends that at annual reexaminations PHAs ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state [Notice PIH 2012-28].

OHA Policy

At the annual reexamination, OHA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state. OHA will use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant.

If OHA proposes to terminate assistance based 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 tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination. [24 CFR 5.903(f) and 5.905(d)]. (See Chapter 13.)

Compliance with Community Service

For families who include nonexempt individuals, 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.F. 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 tenant rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date.

If 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, d*ecreases* in the tenant rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by 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 960.253(f)]

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 three years [24 CFR 960.253(f)]. 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)]. However, these regulations are not applicable to over-income families. Once an over-income determination is made, OHA must conduct an interim reexamination at 12 and 24 months, as applicable, to determine if the family remains over-income [Notice PIH 2023-03].

As it does for families that pay income-based rent, OHA must also review compliance with the community service requirement for families with nonexempt individuals.

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 and composition once every three years.

However, for flat rent families who become over-income, this policy will not apply. OHA will instead conduct an interim reexamination at 12 and 24 months following the initial over-income determination as needed to verify the family remains over-income. The family will continue to be given a choice between income-based and flat rent at each annual reexamination during the over-income grace period.

If the family is subsequently determined to no longer be over-income:

If the determination is the result of an annual reexamination, the family will be given a choice between income-based or flat rent at reexam. If the family selects flat rent, OHA will resume reexamination of family income and composition once every three years.

If determination is as a result of an interim reexamination, OHA will conduct an annual reexamination for the family at their next scheduled annual date. If the family selects flat rent, OHA will resume reexamination of family income and composition once every three years. Families will only be given the choice between income-based and flat rent at annual reexamination.

Reexamination Policies

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.E above.

9-II.C. REEXAMINATION OF FAMILY COMPOSITION ("ANNUAL UPDATE")

As noted above, if full reexaminations are conducted every three years for families paying flat rents, in the years between full reexaminations, regulations require OHA to conduct a reexamination of family composition ("annual update") [24 CFR 960.257(a)(2)]. Over-income families who select the flat rent are not subject to annual update as their income must be reviewed, and an interim reexamination conducted, at 12 and 24 months as applicable.

The annual update process is similar to the annual reexamination process, except that 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

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

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 email, by fax, or in person.

If the family's submission is incomplete, or the family does not submit the information in the required time frame, 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

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

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 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(b); 24 CFR 966.4; and Notice PIH 2023-27

9-III.A. OVERVIEW

Family circumstances may change during the period between annual reexaminations. HUD and OHA policies define the types of information about changes in family circumstances that must be reported, and under what circumstances OHA must process interim reexaminations to reflect those changes.

A family may request an interim determination of family income or composition because of any changes since the last determination. OHA must conduct any interim reexamination within a reasonable period of time after the family request or when OHA becomes aware of a change in the family's adjusted income that must be processed in accordance with HUD regulations. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but OHA generally should conduct the interim reexamination not longer than 30 days after OHA becomes aware of changes in income.

Notice PIH 2023-27 changes the conditions under which interim reexaminations must be conducted, codifies when interim reexaminations should be processed and made effective, and requires related changes for annual reexaminations and streamlined income determinations.

When OHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income.

9-III.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

Reporting

OHA must require families to report household composition changes; however, OHA determines the timeframe in which reporting happens [Notice PIH 2023-27]. OHA must adopt policies prescribing when and under what conditions the family must report changes in family composition [24 CFR 960.257(b)(5)].

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. Policies related to such transfers are located in Chapter 12.

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) within 10 business days of the change.

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)].

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 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.

  If adding a person to a household (other than a child by birth, adoption, or court-awarded custody) will require a transfer to a larger size unit (under the transfer policy in Chapter 12), OHA will approve the addition only if the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by OHA. Exceptions will be made on a case-by-case basis.

  OHA will not approve the addition of a new family or household member unless the individual meets OHA's eligibility criteria (see Chapter 3) and documentation requirements (See Chapter 7, Part II).

  If OHA determines that an individual does not meet OHA's eligibility criteria or documentation requirements, 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

The family must promptly notify OHA if any household member (including a live-in aide, foster child, or foster adult) no longer lives in the unit. OHA must process an interim for all decreases in adjusted income when a family member permanently moves out of the unit.

OHA Policy

If a household 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.

OHA will process an interim if the family's adjusted income will decrease as a result of a family member permanently moving out of the unit.

9-III.C. CHANGES AFFECTING INCOME OR EXPENSES

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.

Interim reexaminations for changes in income or expenses may 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.

OHA must estimate the income of the family for the upcoming 12-month period to determine family income for an interim reexamination [24 CFR 5.609(c)(1)]. Policies for projecting income are found in Chapter 6.

Interim Decreases [24 CFR 960.257(b)(2) and Notice PIH 2023-27]

A family may request an interim determination of family income for any change since the last determination. However, OHA may decline to conduct an interim reexamination if OHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's adjusted income. OHA may set a lower threshold in OHA policy such as performing an interim for any decreases in adjusted income, although HUD prohibits OHA from setting a dollar-figure threshold.

However, while OHA has some discretion, HUD requires that OHA perform an interim reexamination for a decrease in adjusted income of any amount in two circumstances:

- When there is a decrease in family size attributed to the death of a family member; or
- When a family member permanently moves out of the assisted unit during the period since the family's last reexamination.

In the above circumstances, OHA must perform an interim reexamination for any decrease in adjusted income.

If the net effect of the changes in adjusted income due to a decrease in family size results in no change or an increase in annual adjusted income, then OHA must process the removal of the household member(s) as a non-interim reexamination transaction without making changes to the family's annual adjusted income.

OHA Policy

OHA will conduct an interim reexamination any time the family's adjusted income has decreased by any amount.

Interim Increases [24 CFR 960.257(b)(3) and Notice PIH 2023-27]

Increases Less than 10 Percent

OHA must not process interim reexaminations for income increases that result in less than a 10 percent increase in annual adjusted income.

Increases 10 Percent or Greater

OHA must conduct an interim reexamination of family income when OHA becomes aware that the family's adjusted income has changed by an amount that OHA estimates will result in an increase of 10 percent or more in adjusted income, with the following exceptions:

- OHA may not consider any increases in earned income when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction during the same reexamination cycle; and
- OHA may choose not to conduct an interim reexamination during the last three months of a certification period if a family reports an increase in income within three months of the next annual reexamination effective date.

When the family previously received an interim reexamination for a decrease to adjusted income during the same annual reexamination cycle, OHA has the discretion whether to consider a subsequent increase in earned income.

OHA Policy

When a family reports an increase in their earned income between annual reexaminations, OHA will not conduct an interim reexamination, regardless of the amount of the increase, and regardless of whether there was a previous decrease since the family's last annual reexamination.

OHA will process an interim reexamination for any increases in unearned income of 10 percent or more in adjusted income.

OHA will not perform an interim reexamination when a family reports an increase in income (whether earned or unearned income) within three months of their annual reexamination effective date. However, families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases in accordance with OHA policies in Chapter 15.

Concurrent Increases in Earned and Unearned Income [Notice PIH 2023-27]

When the family reports an increase in both earned and unearned income at the same time, OHA must look at the earned and unearned income changes independently of each other to determine if an interim reexamination is performed. OHA will only conduct an interim reexamination when the increase independently meets the 10 percent threshold and all other requirements for performing interim reexaminations. For example, if a family reported increases in both earned and unearned income that overall resulted in a 12 percent increase in their adjusted income, but the change in earned income represented a 7 percent increase and the change in unearned income represented a 5 percent increase, OHA may not perform an interim for either change since neither change meets the 10 percent threshold amount independently. If the change in unearned income met the 10 percent threshold in this case, OHA would be required to perform an interim.

If the change in earned income met the 10 percent threshold in this case, OHA would refer to OHA policy to determine whether an interim was required.

Cumulative Increases [Notice PIH 2023-27]
A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10-percent increase threshold, at which point OHA must conduct an interim reexamination in accordance with OHA policy.

Public Housing Over-Income Families [24 CFR 960.507(c); Notice PIH 2020-3; and Notice PIH 2023-27]
Regardless of changes in adjusted income, in some circumstances OHA is required to conduct an interim reexamination to determine whether a family's income continues to exceed the public housing over-income limit. OHA is required to conduct income examinations of public housing families who have been determined to exceed the over-income limit at specific intervals. When OHA makes an initial determination that a family is over-income during an interim reexamination, OHA must conduct a second interim reexamination 12 months after the over-income determination, and then again 12 months after the second over-income determination, unless the family's income falls below the over-income limit during the 24-month period. This continued evaluation of the family's over-income status requires OHA to notify any family that exceeds the over-income limit that they remain over the income limit, even if the family is paying the flat rent [24 CFR 960.253]. An interim income reexamination to determine if a public housing family remains over-income does not reset the family's normal annual reexamination date.

Family Reporting
OHA must adopt policies consistent with HUD regulations prescribing when and under what conditions the family must report a change in family income or composition [24 CFR 960.257(b)(5)].

OHA policy may require families to report only changes that the family estimates meet the threshold for an interim reexamination or OHA may establish policies requiring that families report all changes in income and household composition, and OHA will subsequently determine if the change requires an interim reexamination [Notice PIH 2023-27].

When OHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income. For example, if the family is reporting a decrease in adjusted income that is more than 10 percent, but the family also had a change in assets that would result in a change in income, the change in assets must also be reviewed [Notice PIH 2023-27].

OHA Policy

The family will be required to report all changes in income regardless of the amount of the change, whether the change is to earned or unearned income, or if the change occurred during the last three months of the certification period. Families must report changes in income within 10 business days of the date the change takes effect. The family may notify OHA of changes either orally or in writing. If the family provides oral notice, OHA may also require the family to submit the changes in writing.

Within 10 business days of the family reporting the change, OHA will determine whether the change will require an interim reexamination.

If the change will not result in an interim reexamination, OHA will note the information in the tenant file but will not conduct an interim reexamination. OHA will send the family written notification within 10 business days of making this determination informing the family that OHA will not conduct an interim reexamination.

If the change will result in an interim reexamination, OHA will determine the documentation the family will be required to submit based on the type of change reported and OHA policies in Chapter 7. OHA will ask the family to report changes in all aspects of adjusted income at this time. The family must submit any required information or documents within 10 business days of receiving a request from OHA. This time frame may be extended for good cause with OHA approval. OHA will accept required documentation by mail, email, fax, or in person. OHA will conduct the interim within a reasonable time period based on the amount of time it takes to verify the information.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if OHA determines that an interview is warranted, the family may be required to attend.

9-III.D. EFFECTIVE DATES

Changes Reported Timely [24 CFR 960.257(b)(6) and Notice PIH 2023-27]

If the family reports a change in family income or composition timely in accordance with OHA policies:

- For rent increases, OHA must provide the family with 30 days advance written notice. The rent increase is effective the first of the month after the end of that 30-day notice period.
- Rent decreases are effective on the first of the month after the date of the actual change leading to the interim reexamination of family income. This means the decrease will be applied retroactively.

Changes Not Reported Timely [24 CFR 960.257(b)(6)(ii) and (iii) and Notice PIH 2023-27]

If the family failed to report a change in family income or composition timely in accordance with OHA policies:

- For rent increases, OHA must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income.
- For rent decreases, OHA must implement the change no later than the first rent period following completion of the interim reexamination.

However, OHA may choose to adopt a policy that would make the effective date of the rent decrease retroactive to the first of the month following completion of the reexamination. PHAs may choose to establish conditions or requirements for when such a retroactive application would

apply. PHAs that choose to adopt such policies must ensure the earliest date that the retroactive decrease is applied is the later of:

- The first of the month following the date of the change that led to the interim reexamination; or
- The first of the month following the most recent previous income examination.

In applying a retroactive change in rent as the result of an interim reexamination, OHA must clearly communicate the effect of the retroactive adjustment to the family so that there is no confusion over the amount of the rent that is the family's responsibility.

OHA Policy

In general, when the family fails to report a change in income or family composition timely, and the change would lead to a rent decrease, OHA will apply the decrease the first of the month following completion of the interim reexamination.

However, OHA will apply the results of the interim reexamination retroactively where a family's ability to report a change in income promptly may have been hampered due to extenuating circumstances such as a natural disaster or disruptions to PHA management operations. OHA will decide to apply decreases retroactively on a case-by-case basis.

When OHA applies the results of interim decreases retroactively, OHA will clearly communicate the effect of the retroactive adjustment to the family and may enter into a repayment agreement in accordance with OHA policies.

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.

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's 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.

PART V: NON-INTERIM REEXAMINATION TRANSACTIONS

Notice PIH 2023-27

Families may experience changes within the household that do not trigger an interim reexamination under OHA policy and HUD regulations but which HUD still requires OHA to report via Form HUD-50058. These are known as *non-interim reexamination transactions*. In these cases, OHA will submit a separate, new action code on Form HUD-50058. The following is a list of non-interim reexamination transactions:

- Adding or removing a hardship exemption for the child care expense deduction;
- Updating or removing the phased-in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (the phased-in relief will begin at an eligible family's first annual or interim reexamination, whichever is sooner, after January 1, 2024);
- Adding or removing general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction;
- Adding or removing a minimum rent hardship;
- Adding or removing a non-family member (i.e., live-in aide, foster child, foster adult);
- Ending a family's EID or excluding 50 percent (decreased from 100 percent) of a family member's increase in employment income at the start of the second 12-month EID period.
- Adding a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Removing a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Adding/updating a family or household member's Social Security number; and
- Updating a family member's citizenship status from eligible to ineligible or vice versa, resulting in a change to the family's rent and/or utility reimbursement, if applicable (i.e., family begins receiving prorated assistance or previously prorated assistance becomes full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible noncitizen(s).

OHA must make all other changes to assets, income, and deductions at the next annual or interim reexamination of income, whichever is sooner.

Exhibit 9-1 Summary of the Alternative Recertification Schedules			
	Annual	**Biennial**	**Triennial**
Frequency	Once per year	Once every 2 years	Once every 3 years

Target Group	Households with:
	• **No income at all (zero income)**
	• **No income from wages**
	• **Income over 120% AMI**
	• **Income from a temporary source** such as
	  ○ Temporary Assistance for Needy Families (TANF)
	  ○ General Assistance GA)
	  ○ Child Support
	  ○ Unemployment
	  ○ Other non-wage sources
	• Mixed income from fixed source (e.g. Social Security (SS), Supplemental Security Income (SSI)) and temporary source (e.g. TANF, GA)
	❖ Also includes households enrolled in Special Programs (e.g. Mainstream, Mod Rehab, VASH, MOMS, Local Program, and FSS –some Special Program types will follow alternative recertification schedule)
		Households with:
		• **Any income from wages**
		• Mixed income from wage source and fixed source (e.g. SS, SSI)
		• Mixed income from a wage source and a temporary source (e.g. TANF, child support)
			Elderly and/or Disabled Head of Households with:
			• **All income from a fixed source** such as:
			  ○ SS
			  ○ SSI
			  ○ Pension

During the Interim Years	✓ Required to report increases in income when it occurs ✓ May report decreases in income at any time ✓ Must report changes in household composition when it occurs	✓ Not required to report increases in income ✓ May report decreases in income at any time ✓ Must report changes in household composition when it occurs	✓ Not required to report increases in fixed income ✓ Required to report any new or non-fixed income sources ✓ May report decreases in income at any time ✓ Must report changes in household composition when it occurs ✓ Cost of Living Adjustment (COLA) may be automatically applied to household's related income subsidy (once per year at interim recertification)
Hardship Policy	Households can request a review, at any time, of OHA's determination of their adjusted income, and the use of such income to compute their tenant rent if they feel it has been calculated incorrectly.		

EXHIBIT 9-1: CALCULATING INCOME AT ANNUAL REEXAMINATION

Example 1: Calculating Annual Income at Annual Reexamination Using EIV

Staff are processing the 3/1/2024 annual reexamination for Ruby Myers and her minor daughter, Georgia. No interim reexaminations have been processed, and Ruby has not reported any changes to annual income to OHA since the 3/1/2023 annual reexamination. The SSA-published 2024 COLA is 7 percent.

Last reexamination – 3/1/2023 Annual Reexamination

Ruby:	Georgia:
Wages: $30,000	SSI: $10,980 ($915 monthly)

The EIV report pulled on 12/15/2023

Ruby:
Wages Total: $33,651
Quarter 3 of 2023: $8,859 (City Public School)
Quarter 2 of 2023: $8,616 (City Public School)
Quarter 1 of 2023: $8,823 (City Public School)
Quarter 4 of 2022: $7,353 (City Public School)

Georgia:
SSI Total: $10,980
2023 benefit $915 monthly

<table>
<tr><td colspan="2">Income Reported on Reexamination Application</td></tr>
<tr><td>Ruby:
Wages at City Public School: $32,000 (switched jobs but no permanent change to amount)</td><td>Georgia:
SSI benefits: $10,980 (no changes)</td></tr>
<tr><td>Calculating Ruby's wages:
Step 1: Determine prior annual income from EIV (i.e., Q4 2022 through Q3 of 2023: $33,651).
Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination).
Step 3: Ruby certifies that the $33,651 of wages in EIV is accurate and reflects her current annual income, so the PHA will use $33,651 for annual wages for the 3/1/2024 annual reexamination given there have been no additional changes to annual income.</td><td>Calculating Georgia's SSI benefit:
Step 1: Determine the prior annual income from EIV (i.e., $915 x 12 months: $10,980).
Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination).
Step 3: Ruby certifies the SSI income in EIV is accurate and reflects Georgia's current annual income. The PHA must adjust the prior-year income (2023 SSI benefit) by the 7- percent COLA and will use this amount to calculate annual SSI income for the 3/1/2024 annual reexamination:
COLA: $64.05 ($915 x 0.07)
New gross SSI benefit: $11,748.60 ($979.05 x 12 months)</td></tr>
<tr><td colspan="2">If Ruby did not agree with the annual wages reported in EIV, the PHA/MFH Owner would be required to verify her current income in accordance with HUD's verification hierarchy.</td></tr>
<tr><td colspan="2">Summary of Annual Income (as reported on the HUD-50058)</td></tr>
<tr><td>Ruby (Head of Household):
Other Wage: $33,651
Myers Family Total Annual Income: $45,399</td><td>Georgia (Other Youth Under 18):
SSI: $11,748</td></tr>
</table>

Example 2: Calculating Annual Income at Annual Reexamination Using EIV: Family Disagrees with EIV

Staff are processing Paul Hewson's 5/1/2024 annual reexamination. Since the last annual reexamination, Paul reported a decrease in annual income that exceeded 10 percent. Last year, Paul reported a decrease in earned income because he transferred from a full-time job at Sasha's Sweets to a part-time job at Viking Bakery. Following HUD's EIV verification hierarchy, staff confirmed Paul was no longer employed at Sasha's Sweets and decreased his anticipated annual income from $28,000 to $7,500 resulting from his new part-time employment at Viking Bakery; an interim reexamination was processed effective 7/1/2023. After the 7/1/2023 interim, Paul worked briefly at two different jobs, but he says he is no longer working and is not planning to work.
5/1/2023 Annual Reexamination
Wages: $28,000

The EIV report pulled on 1/15/2024

Wages Total: $18,271
Quarter 3 of 2023: $2,500 (Viking Bakery)
Quarter 3 of 2023: $796 (Sweet Tooth Candy Bar)
Quarter 2 of 2023: $1,300 (Sasha's Sweets)
Quarter 2 of 2023: $584 (Larry's Concessions)
Quarter 2 of 2023: $2,401 (Viking Bakery)
Quarter 1 of 2023: $6,500 (Sasha's Sweets)
Quarter 4 of 2022: $600 (Sasha's Sweets)
SS/SSI: No history of benefits

Income Reported on Reexamination Application
Wages: $0 (permanent change; no longer receiving) Social Security: $14,400 ($1,200 monthly) Paul certified on the PHA's annual reexamination paperwork that he does not agree with the annual wages of $18,271 reported in EIV and it is not reflective of his current anticipated annual income. He reported he is currently unemployed, and provided a copy of an award letter from the Social Security Administration to document that he will begin receiving a monthly disability benefit of $1,200 effective 3/1/2024.
Calculating Wages and SS Benefit
Step 1: Determine prior annual income taking into consideration the 8/1/2023 interim reexamination (i.e., EIV wages reflected Q4 2022 through Q3 2023: $18,271) Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there was a 7/1/2023 interim that reduced wages to $7,500. Step 3: Obtain documentation to verify current income and confirm Paul is no longer employed at Viking Bakery or The Sweet Tooth Candy Bar (the employers reported in the most recent quarter of EIV). This step is necessary, because Paul did not agree with the EIV income report or income reported on the last interim reexamination. Paul reported that he is no longer working at all. Process the annual reexamination effective 5/1/2024 using annual SS income of $14,400 and $0 wages.
Summary of Annual Income (as reported on the HUD-50058)
Paul (Head of Household): $14,400 (SS) Hewson Family Total Annual Income: $14,400

Example 3: Calculating Annual Income at Annual Reexamination

Staff are processing the 11/1/2024 annual reexamination for Samantha and Fergus Pool, head of household and spouse. On 2/14/2024 Samantha reported her monthly child support payment was reduced from $200 to $100 per month, but an interim reexamination was not processed because the reduction in child support income for Samantha's daughter, Hailey, did not result in a decrease of 10 percent or more in annual adjusted income, and the PHA did not establish a lower threshold. Samantha did not report any additional changes to the PHA.

Last reexamination – 11/1/2023 Annual Reexamination

Samantha:	Fergus:
Business income: $28,000	Wages: $8,250
VA disability pension: $12,000	Other non-wage income: $3,000 (Go Fund Me online fundraiser)
Child support: $2,400	

The EIV report pulled on 9/16/2024

Samantha:	Fergus:
Wages Total: $0 (no wage data reported since Q1 2023)	Wages Total: $8,600 Quarter 1 of 2024: $2,100 (Ian's Fish 'n' Chips) Quarter 1 of 2024: $500 (Claire's Healthcare Supplies) Quarter 4 of 2023: $1,000 (Claire's Healthcare Supplies) Quarter 3 of 2023: $1,800 (The Onion Garden Shop) Quarter 2 of 2023: $3,200 (Ivar's Fish Haus)

Current Family Circumstances: Income Reported on Reexamination Application

Samantha and Fergus reported how much income was earned/received in the previous 12-month period and noted permanent changes, where applicable, for each source of their income on PHA's annual reexamination form. However, no information was reported by the family concerning other non-wage income. Fergus reported only wages and his current employment at Ian's Fish 'n' Chips for the annual reexamination. The family supplied the supporting documentation noted below to the PHA for the 11/1/2024 annual reexamination.

Samantha:	Fergus:
Business income: $28,750 (last year); has decreased to $18,000 (permanent change) VA disability benefit: $12,000 (last year); has increased to $12,300 (permanent change) Child support: $2,400 (last year); has decreased to $1,200 (permanent change)	Wages: $6,000

Calculating Samantha's Net Business Income

Step 1: Determine prior annual net business income (i.e., $28,000 on last HUD–50058.
Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.
Step 3: Adjust to reflect current net business income. Samantha reported on the annual reexamination application that business income permanently decreased to $18,000. The PHA must obtain supporting documentation from Samantha that demonstrates current net business income. Samantha provided documentation that supported the current annual net business income is $18,000. Process the annual reexamination effective 11/1/2024 using annual net business income determined in Step 3.

Calculating Samantha's VA Pension Income

Step 1: Determine prior annual VA pension income (i.e., $12,000 supported by a VA award letter Samantha supplied that documents the prior year monthly VA pension was $1,000).
Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.
Step 3: The PHA needs to adjust to reflect current VA pension income. Samantha supplies a VA award letter showing a monthly pension of $1,025, or $12,300 annually. Process the annual reexamination effective 11/1/2024 using annual VA pension income determined in Step 3 ($12,300 in this example).

Calculating Samantha's Child Support Income

Step 1: Determine prior annual child support income (i.e., $2,400 on the last HUD–50058).
Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination. The family reported a decrease from $200 to $100 monthly, but the change was not processed because it did not meet the threshold.
Step 3: The family reported changes, so the PHA must adjust to reflect current child support income. In this example, the family submitted a child support history report from the local child support office that documents regular $100 monthly child supports payments beginning 3/1/2024 through the current month. Process the annual reexamination effective 11/1/2024 using current annual child support income determined in Step 3 ($1,200 in this example).

Calculating Fergus' Wages

Step 1: Determine prior annual income from wages in EIV (i.e., Q2 2023 through Q1 of 2024: $8,600).
Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: There is a discrepancy between what the family reported and EIV, so the PHA must verify and adjust to reflect current annual income from wages. Fergus reported $6,000 in annual income from wages on the annual reexamination from a single employer, Ian's Fish 'n' Chips. The PHA projected annual income of $7,800 based on the two paystubs for this employer, and EIV shows $8,600 earned in the most recent four quarters in EIV. To complete Step 3, the PHA must do the following:

- Resolve the discrepancy between EIV wages, the $6,000 annual income Fergus reported, and the $7,800 projected based on the paystubs he provided, and
- Verify he is no longer employed at Claire's Healthcare Supplies in accordance with HUD's verification hierarchy and local policies.

The PHA determined that Fergus reported his net vs. gross annual income from wages, which he corrected on the annual reexamination form to reflect his current gross annual income of $9,000. The PHA verified Fergus was no longer employed at Claire's Healthcare Supplies and obtained two additional paystubs. Based on four current and consecutive paystubs, Fergus is now projected to earn $9,360 annually. Process the annual reexamination effective 11/1/2024 using income from wages determined in Step 3 ($9,360 in this example).

<table>
<tr><td colspan="2">Calculating Fergus' Other Non-Wage Income
Step 1: Determine prior annual income from other non-wage income (i.e., $3,000 on the last HUD– 50058).
Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.
Step 3: The family did not report any non-wage income on the annual reexamination form, but it was included on the last HUD–50058. The PHA must verify and adjust to reflect current non-wage income. The PHA must verify no income was received through a "Go Fund Me" online fundraiser so that it may be excluded. Fergus provided a self-certification that he hasn't solicited funds online and doesn't plan to in the following year; he also provided records from the account that documented no fundraising activity in the prior 12-month period. Process the annual reexamination effective 11/1/2024 using annual non-wage income of $0 determined in Step 3.</td></tr>
<tr><td colspan="2">Summary of Annual Income (as reported on the HUD-50058)</td></tr>
<tr><td>Samantha (Head of Household):
Own business: $18,000
Pension: $12,300
Child support: $1,200</td><td>Fergus (Co-head):
Wages: $9,360</td></tr>
<tr><td colspan="2">Poole Family Total Annual Income: $40,860</td></tr>
</table>

CHAPTER 10

ANIMALS

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

INTRODUCTION

This explains OHA's policies on the keeping of animals 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: Service Animals and Assistance Animals. This part explains the difference between service animals, assistance animals and pets. Policies related to the designation of a service animal, an assistance animal and their care and handling are discussed in this part.

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: SERVICE ANIMALS AND ASSISTANCE ANIMALS

[Section 504; Fair Housing Act (42 U.S.C.); 24 CFR 5.303; 960.705]

10-I.A. OVERVIEW

This part discusses situations under which permission for a service or an assistance animal may be denied, and also establishes standards for the care of services and assistance animals. OHA's pet policies described in Parts II through IV of this chapter [24 CFR 5.303; 960.705] do not apply to service animals or assistance animals. All lease provisions apply for service and assistance animals, including maintaining a clean, sanitary unit and ensuring neighbors enjoy the premises in a peaceful, quiet, and nonthreatening environment. The expense of flea elimination shall also be the responsibility of the resident.

OHA requires documents verifying that all animals living in OHA units, including service animals and assistance animals, are licensed, have had their shots and/or documented as healthy animals by a vet or pet shop owner. Any damage caused by a service or assistance animal to the unit and/or common areas of the dwelling will be charged to the tenant for the cost of repairing the damages and may include deduction from the security deposit on move out

10-I.B SERVICE ANIMALS

The Department of Justice (DOJ) under the American with Disabilities Act (ADA) makes a distinction between a *"**service animal**"* and "***assistance animal***." *"Service animals"* are limited to trained dogs. *"**Service animals**"* are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA."

OHA may deny a request for a service animal in limited circumstances:

- The animal is out of control and the handler does not take effective action to control it,
- The animal is not housebroken, or
- The animal poses a direct threat to health or safety that cannot be eliminated or reduced by a reasonable modification of other policies

A service animal must be permitted in all areas of the facility where members of the public are allowed.

Residents must submit a reasonable accommodation to gain approval

10-1.C ASSISTANCE ANIMALS

"Assistance animals" may include animals other than dogs and 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," companion animal" 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

The assistance animal should be allowed to accompany the person wherever people are normally allowed to go, unless it is assessed that allowing access would "impose an undue burden or would fundamentally alter the nature of the housing provider's services." This assessment must be made on a case by case basis. OHA does not require assistance animals to be individually trained or certified. Include definitions for each type of animal according to the law.

10-I.D. 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 documented 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 l physical damage to the property of others

OHA has 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.E. 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 service animals and 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 service animal or 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 service animal or assistance animal. If the service animal or assistance animal is not removed from the rental dwelling upon the withdrawal of approval for the particular service animal or assistance animal then OHA may initiate eviction proceedings.

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 pet and applies to all OHA owned properties.

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 written documentation signed by a licensed veterinarian or state/local authority which verifies that the pet has been spayed or neutered, received all inoculations required by state or local law, has no communicable disease(s), is pest-free, is a healthy pet, and weighs 25lb or less.

The pet agreement must be renewed annually and will be coordinated with the annual reexamination date. The resident must provide proof each year that the pet continues to meet all of the stated requirements.

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 pet 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
- feral animals
- Pot-bellied pigs
- Animals used for commercial breeding
- Barnyard animals (City ordinance Section 6.04.320)

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

OHA Policy

The following animals are not permitted:

- Any animal whose t weight will exceed 25 pounds
- Any animal 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

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) animals 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 residential site 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

OHA will provide a 90 day notice to residents of newly designated "no pets" buildings, floors of buildings, and/or sections of buildings.

Unit Inspections/ Maintenance Repairs

During all unit inspections and maintenance repairs, animals must be crated while inside the unit or removed from the interior of the unit and kept at a reasonable distance to allow staff to perform inspections and/or repairs.

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.

Tethering and *chaining* refers to the practice of fastening a dog to a stationary object or stake, usually in the owner's yard, as a means of keeping the animal under control. These terms do not refer to the periods when an animal is walked on a leash.

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. This rule does not apply to visiting pet programs sponsored by a humane society or other non-profit organizations, and approved by OHA.

Residents are prohibited from feeding or harboring stray animals.

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. This includes if a determination is made on objective facts supported by written statements, that a resident/pet owner has violated the pet rules, a 30 or 60-day notice to cure or quit will be served. Said notice will meet the requirements for termination notices described in Section 13-IV.D, Form, Delivery, and Content of the Notice.

- A 30 or 60-day notice will contain a brief statement of the factual basis for the determination of the pet rule(s) that were violated.

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.

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 pet per dwelling unit. OHA may permit payments in increments of $50 per payment for 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. OHA must refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the unit. OHA may return the pet deposit upon completion of an inspection or if the owner 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 21 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 21 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's Plan must contain a statement of 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).

- The required community service or self-sufficiency activity may be completed at 8 hours each month or may be added together during a 12-month period, as long as 96 hours is completed by each annual certification. (**Notice PIH-2015-12 (HA))**
  .

Definitions

Exempt Individual [24 CFR 960.601(b), Notice PIH 2015-12]

An *exempt individual* is an adult who is:

- Age 62 years or older
- Blind or disabled (as defined under section 216[i][l] 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
- A primary caretaker of such an individual

- Engaged in work activities

  OHA Policy

  OHA will consider 8 hours per week as the minimum number of hours needed to qualify for a work activity exemption.

- Able to meet 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 (42 U.S.C. Section 601 et seq.), or under any other welfare program of the state in which OHA is located, including a state-administered welfare-to-work program; or
- A member of a family receiving assistance, benefits, services under a state program funded under part A of title IV of the Social Security Act (42 U.S.C. Section 601 et seq.), or under any other welfare program of the state in which OHA is located, including a state-administered welfare-to-work program and the supplemental nutrition assistance program (SNAP), and has not been found by the state or other administering entity to be in noncompliance with such program.

- Able to meet requirements of being exempted 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

  - This exemption applies to anyone whose characteristics or family situation meet the welfare agency exemption criteria and can be verified

Community Service [PH Occ GB, p. 174]

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities

Eligible community service activities includes, but are not limited to:

- Local public or nonprofit institution including but not limited to: schools, Head Start Programs, before-or after- school programs, childcare centers, hospitals, hospices, recreation centers, senior centers, adult daycare centers, homeless shelters, feeding programs, food banks (distributing donated or commodity foods), clothes closets (distributing donated clothes), etc.;
- Nonprofit organization that serves OHA residents or their children such as: local churches, Boy Scouts, Girl Scouts, Boys or Girls Clubs, 4-H programs, Police Athletic League, organized children's recreation, mentoring, or education programs, Big Brothers or Big Sisters, Garden Center, community clean-up programs, beautification programs, other youth or senior organizations;

- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels;

- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods or performing arts;

  - OHA to help improve physical conditions (so long as such work does not alter OHA's insurance coverage); help with children's and/or senior programs; or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
  - Helping neighborhood groups with special projects
  - Caring for the children of other residents so they may volunteer

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, but are not limited to:

- Job readiness or job training while not employed;
- Training programs through local One-Stop Career Centers, Workforce Investment Boards (local entities administered through the U.S. Department of Labor), or other training providers;
- Higher education (junior college or college);
- Employment counseling work placement;
- Basic skills training; ,
- English as a second language and/or English proficiency; ,
- Reading, financial, household management, or computer literacy classes;
- Apprenticeships (formal or informal);
- Budgeting or credit counselling; 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

Notification Requirements [24 CFR 960.605(c)(2), Notice PIH 2015-12, Notice PIH 2016-06]

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. The family must also sign a certification annually, certifying that they understand the requirement. OHA must notify that OHA will be validating a sample of self-certifications of completions of the service requirement accepted by OHA under 24 CFR 960.607(a)(1)(ii).

OHA Policy

OHA will provide the family with a copy of the Community Service Policy, at lease-up, reexamination, 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. The policy will notify the family that self-certification forms are subject to review by OHA.

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 at the time of reexamination. 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.

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 the annual update, 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 an 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 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 the 30 day notice.

Determination of Initial Compliance

When an adult family member becomes subject to community service, he or she must perform 8 hours of community service for the months he or she is subject to the requirement before the end of the lease term (anniversary date).

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 by submitting a completed CSSR Exemption Form and provide supporting documentation, if necessary. 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 15 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 OHA's issuance of written notice of exempt status.

11-I.D. DOCUMENTATION AND VERIFICATION [24 CFR 960.605(c)(4), 960.607, Notice PIH 2016-08]

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. 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.

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, he or she can dispute the decision through OHA's grievance procedures. (See Chapter 14.)

Documentation and Verification of Compliance [24 CFR 960.607(a)]

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 to OHA one of the following:

1) A completed Community Service Participation Log, obtained from OHA, signed by the CSSR eligible organization certifying that the family member has performed the qualifying activities for the required hours, and includes the contact information for the community service provider with a description of activities performed, and the dates of service. [24 CFR 960.607]. This form must also be signed by the family member certifying completion of the activities on the log and that the organization signatures are authentic.
2) A completed Community Service Participation Log, signed by the family member self-certifying compliance with the community service requirement. (FR Vol 81 No. 45).

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 initial lease-up, at annual update, 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 telephone 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, at least annually.

OHA may accept signed self-certifications of compliance. Any self-certification may be subject to validation by third party verification. 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

Noncompliant Residents

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)].

OHA may not evict a family due to CSSR noncompliance. However, if OHA finds a tenant is noncompliant with CSSR, OHA must provide written notification to the tenant of the noncompliance which must include:

- A brief description of the finding of non-compliance with CSSR.
- A statement that OHA will not renew the lease at the end of the current 12-month lease term unless the tenant enters into a written work-out agreement with OHA or the family provides written assurance that is satisfactory to OHA explaining that the tenant or other noncompliant resident no longer resides in the unit. Such written work-out agreement must include the means through which a noncompliant family member will comply with the CSSR requirement [24 CFR 960.607(c), Notice PIH 2015-12].

The written agreement must include the means through which a noncompliant family member will comply with the CSSR.

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 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 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 and Enforcement Documentation [24 CFR 960.607(b)]

Should a family member refuse to sign a written work-out agreement, or fail to comply with the terms of the work-out agreement, OHA is required to initiate termination of tenancy proceedings at the end of the current 12-month lease (see 24 CFR 966.53(c)) for failure to

comply with lease requirements. When initiating termination of tenancy proceedings, OHA will provide the following procedural safeguards:

- Adequate notice to the tenant of the grounds for terminating the tenancy and for non-renewal of the lease;
- Right of the tenant to be represented by counsel;
- Opportunity for the tenant to refute the evidence presented by OHA, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense which the tenant may have; and,
- A decision on the merits

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

OHA may not substitute any community service or self-sufficiency activities performed by residents for work ordinarily performed by OHA 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 he or she 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 the Resident Advisory Boards, 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 the Resident Advisory Boards 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: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(l) and Section 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE

Social Security Act

216(i)(1): Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

Section 1416 (excerpt):

SEC. 1614. *[42 U.S.C. 1382c]* (a)(1) For purposes of this title, the term "aged, blind, or disabled individual" means an individual who:

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or

(ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

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 due to unit conditions, emergency transfer procedures, inter-program, inter-portfolio transfers, VAWA related emergency transfer requests (see Exhibit 16-3 OHAs Emergency Transfer Plan), and payment of transfer costs. High-priority transfers for confidential client requests (ccrs) requiring an immediate move due to threat of harm, criminal activity or reasonable accommodation requests are discussed in Section 12-III.B. Types of Resident Requested Transfers.

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 alternative accommodations must be provided for the resident, 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.

OHA may create a "transfer" waitlist consisting of transfer requests and households on the transfer list may be offered assistance in public housing or the Section 8 Program.

Under MTW authority and with Executive Director approval, OHA may standardize the transfer policy to allow inter-program moves and transfers between the public housing, Housing Choice Voucher, or Project-based Voucher programs, if there are PBV units or HCV available and the resident is determined to be eligible for the relevant program. OHA may also allow participants of local, non-traditional programs to transfer to the public housing program provided that the family has met the program guidelines specified in the local program. This policy is authorized under Attachment C, Section C.2. of the Amended and Restated Moving to Work Agreement.

PART I: EMERGENCY TRANSFERS

12-I.A. OVERVIEW

This section discusses emergency transfers due to unit conditions. HUD categorizes certain circumstances as emergency transfers [PH Occ GB, p. 147]. The emergency transfer differs from other transfers in that it requires immediate action by OHA. An emergency is defined as 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. Any condition that would produce an emergency work order, as defined under the Public Housing Assessment System (OHA) Management Assessment Subsystem will be considered an emergency. Examples of such unit or building conditions would include for example: a gas leak; no heat in the building during the winter; no water; toxic contamination; and serious water leaks..

OHA will qualify a resident for an emergency transfer if OHA is unable to make repairs within 24 hours. OHA will take such action to remain compliant with the lease obligations, [PH Occ GB, p. 14, 24 CFR § 966.48 (i), 901.25 (a), 966.4 (h)(4)]

12-I.B. CONDITIONS OF UNIT EMERGENCIES

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 defines 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.

In the case of a genuine emergency, it may be unlikely that OHA will have the time or resources to immediately transfer a resident. 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 possible. OHA may transfer the resident to a unit at another OHA or 3rd Party Public Housing Site.

12-I.C. EMERGENCY RELOCATIONS

OHA Policy

If a temporary relocation 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. OHA may transfer the resident to another OHA or 3rd party Public Housing unit.

Emergency transfers that arise due to maintenance conditions are mandatory for the resident as defined by OHA compliance with NSPIRE.

12-I.D. COSTS OF EMERGENCY TRANSFER

OHA may bear the reasonable costs of temporarily accommodating the resident's alternative lodging when emergency conditions exist and the damage was not caused by the resident.

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.

If the tenant elects to move their belongings OHA will reimburse the family for eligible out of pocket moving expenses up to OHA's established moving allowance.

12-I.E. OHA HIGH PRIORITY INTER-PROGRAM AND INTER-PORTFOLIO TRANSFER POLICY

Under MTW authority and subject to approval by the Executive Director, or his or her designee, OHA may allow for an high-priority inter-program or inter-portfolio transfer between the public housing program, designated Section 8 PBV or HCV programs based on availability.

Inter-program transfers may be offered if the resident is eligible for the relevant program. OHA will conduct threshold eligibility screening to meet program requirements so as to eliminate duplicating screenings that were performed at entry into the initial program. The transfer may include transfer to designated 3rd party PBV, public housing sites, or by approval from the Executive Director or his designee, the Housing Choice Voucher program.

Where applicable, transfer applicants must be in good standing or have worked out a repayment agreement with OHA prior to OHA initiating the transfer. As VAWA transfers are not discretionary, good standing and repayment agreements are not required prior to initiating, processing, or implementing a VAWA-related emergency transfer request. Inter-program/Inter-portfolio transfers will be processed in the following order:

- Threat of harm, criminal activity, domestic violence and/or VAWA
- Reasonable Accommodation as outlined in Chapter 2-II.A-H of this ACOP
- Occupancy Standards as outlined in Chapter 5 of this ACOP

Exceptions to the above policy must be approved by the Executive Director or their designee.

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. Additionally, 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 due to the following:

- make an accessible unit available for a disabled family,
- comply with occupancy standards,
- demolition, disposition, revitalization, or rehabilitation, and
- emergency transfers as discussed in Part I of this chapter.

Transfers required by OHA is 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.

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 under-occupied 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 under-occupied, 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 may establish a transfer waitlist for all residents that are under-occupied and/or overcrowded. Families will be placed on the transfer list by OHA when the family size has changed and the family is now too large (overcrowded) or too small (under-occupied) for the unit occupied. OHA may transfer a family in accordance with the Transfer Processing policy discussed in this chapter.

For purposes of the transfer policy, overcrowded and under-occupied 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.

Under-occupied: 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 under-occupied 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 under-occupied 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. maybe required to transfer if it is necessary to comply with the approved exception.

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.

OHA will transfer families in accordance with each project's relocation plan. The relocation may include moving to a 3rd party public housing or PBV unit.

12-II.E. ADVERSE ACTION [24 CFR 966.4(e)(8)(i)]

An 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.

12-II.D. COST OF OHA REQUIRED TRANSFER

Residents will be required to bear the cost of moves to make an accessible unit available and moves due to occupancy standard transfers.

OHA will bear the reasonable costs of transfers that OHA requires for demolition, disposition, revitalization, or renovation.

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.

If the tenant elects to move their belongings, OHA may reimburse the family for eligible out-of-pocket moving expenses up to OHA's established moving allowance.

Exceptions to this policy must be approved by the executive director or their designee.

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 including VAWA related emergency transfer requests. 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 to alleviate a serious or life threatening condition, a threat of physical harm or criminal activity, VAWA, reasonable accommodation, and a different unit size as long as the family qualifies for the unit according to OHA's occupancy standards. No other transfer requests will be considered by OHA.

OHA will consider the following reasons for the transfer request as high priority:

- 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 that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, a hate crime, or domestic violence, dating violence, sexual assault, or stalking. For instances of domestic violence, dating violence, sexual assault, or stalking, the threat may also be established through documentation outlined in section 16-VII.D, or by any proof accepted by OHA.
- A reasonable accommodation.
- Change in unit size due to severe overcrowding

OHA will consider all transfer requests due to occupancy standards as low priority except in the case of severe overcrowding

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

Regular Priority Inter-Program and Inter-Portfolio Transfer Policy

Under MTW authority OHA may standardize the transfer policy to allow public housing residents with at least two years of residency to request a transfer to the Section 8 PBV or HCV programs, if there are PBV units or HCV available and the resident is eligible for the relevant program. OHA may also allow participants of local, non-traditional programs to request a transfer to the public housing program provided that the family has met the program guidelines specified in the local program. This option is available up to 10% of the total public housing units. OHA will maintain a transfer request waitlist. The decision to open and close the transfer list is at the discretion of OHA.

12-III.C. ELIGIBILITY FOR TRANSFER

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, OHA may establish other standards for considering a transfer request [PH Occ GB, p. 150].

OHA Policy

Except where reasonable accommodation and VAWA is being requested, OHA will only consider transfer requests from residents that meet the following good record requirements:

- Have not engaged in criminal activity that threatens the health and safety of residents and staff
- Does not owe back rent or other charges, and does not have a pattern of late payment
- Does not have any housekeeping lease violations or history of damaging property
- Can obtain 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 above may be made when it is to OHA's advantage to make the transfer. Exceptions may also be made when OHA determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, sexual assault, or stalking and who provides documentation of abuse in accordance with section 16-VII.D of this ACOP.

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 OHA managed public housing unit to another OHA managed public housing unit, 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 RESIDENT REQUESTED 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. The definition of financial hardship for purposes of this section will be as that term is defined in section 6-IIIB of the ACOP.

12-III.F. HANDLING OF REQUESTS

OHA Policy

Residents requesting a transfer to another unit, development, or program 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 transfer request is approved the family may be placed on the transfer waitlist.

If the family does not meet the eligibility to transfer requirements under Section 12-III.C., OHA may deny the request for transfer.

OHA will respond within fifteen (15) 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. See Chapter 14 for grievance policy.

VAWA related requests are discussed in the Emergency Transfer Section,

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. OHA will evaluate considerations such as the number of families on OHA's site-based waiting lists, total number and bedroom size of vacant units, fiscal impact, and OHA's ability to continue to serve eligible residents. .

OHA will maintain a transfer list and procedures that determine order and priority of processing transfers.

Emergency transfers due to unit conditions will not automatically go on the transfer list. Emergency transfers will be handled in compliance with Chapter 12 Part A Emergency Transfers.

With the approval of the Executive Director or designee, OHA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow OHA to meet the demolition or renovation schedule.

Emergency and high priority transfers will take precedence over site-based 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.

Residents who are required to be transferred for the following reasons shall be given up to two offers(not including rejection for acceptable justification as outlined in sections 12-IV.B) depending on the availability of unit with the qualified bedroom size:

- An emergency;
- Transfer to a unit that reasonably accommodates a family member's disability; and

Refusal to accept a transfer by any resident who may be required to move in compliance with occupancy standards contained in Chapter 5 or because their dwelling unit is not habitable shall be grounds for termination of their lease.

OHA Policy

Residents that are grossly over-housed or under-housed 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.

When the unit transfer has been granted due to an approved reasonable accommodation request and the unit offered is rejected, OHA may request an "interactive meeting" to allow the resident to state the reasons for rejecting the unit offered and explain the nexus between their approved reasonable accommodation request and the need for an alternative unit. If OHA determines that there is no nexus for the alternative unit the resident will be given another opportunity to accept the unit offered or remain in the current unit. OHA will document the outcome of the meeting and provide a written summary to the resident and place a copy in the resident's file.

12-IV.D. GOOD CAUSE FOR UNIT REFUSAL

OHA Policy

Good cause for refusal of a unit offer includes reasons related to health, disability, proximity to work, school, and childcare (for those working or going to school).

Refusals due to location alone do not qualify for good cause exemption.

OHA will require documentation of good cause for unit refusals.

12-IV.E. DECONCENTRATION

OHA Policy

If subject to deconcentration requirements, OHA will consider its deconcentration goals when transfer units are offered. When feasible, families above the EIR will be offered a unit in a development that is below the EIR, and vice versa, to achieve 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 to the dwelling lease agreement may terminate the lease in accordance with the terms of the lease. 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. OHA has the authority to 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 when termination of the lease is mandatory by OHA.

When determining OHA policy on terminations of the lease, OHA must consider state and local landlord-tenant laws.in the area where OHA is located. , Such laws could vary from one location to another and these variances may be either more or less restrictive than federal law or HUD regulations.

This chapter presents the policies that govern both the family's and OHA's termination of the lease voluntary termination of the lease by the family and the mandatory and voluntary termination of the lease by OHA. It is presented in four parts:

Part I: Termination by Tenant. This part discusses the OHA's requirements for voluntary termination of the lease by the family.

Part II: Termination by OHA - Mandatory. This part describes circumstances when termination of the lease by OHA is mandatory. This part also explains nonrenewal of the lease for noncompliance with community service requirements.

Part III: Termination by OHA – Other Authorized Reasons. This part describes 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 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 property site 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.

PART II: TERMINATION BY OHA – MANDATORY

13-II.A. OVERVIEW

HUD requires mandatory termination of the lease for certain actions or inactions of the family. There are other actions or inactions of the family that constitute *grounds* for lease termination, but the lease termination is not mandatory. OHA must establish policies for termination of the lease in these cases where termination is optional for OHA.

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 she/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 time frame 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 non-citizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

13-II.D. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS[24 CFR 5.218(c) and 24 CFR 960.259(a)(3), Notice PIH 2012-10]

OHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and OHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, OHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date OHA determined the family to be noncompliant.

OHA Policy

OHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline

13-II.E. FAILURE TO ACCEPT 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 the Resident Advisory Board 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. LIFETIME REGISTERED SEX OFFENDERS [Notice PIH 2012-28]

Should a OHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, OHA must immediately terminate assistance for the household member.
In this situation, OHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, OHA must terminate assistance for the household.

13-II.H. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]

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.

13-II.I. DEATH OF SOLE FAMILY MEMBER [NOTICE PIH 2012-10]

OHA must immediately terminate the lease following the death of the sole family member.

13-II.J. OVER_INCOME FAMILIES [24 CFR 960.507; FR Notice 7/26/18; Notice PIH 2023-03; FR Notice 2/14/23]

In the public housing program, an *over-income family* is defined as a family whose income exceeds the over-income limit for 24 consecutive months. When this occurs, OHA must either:

- Terminate the family's tenancy within six months of OHA's final notification of the end of the 24-month grace period; or
- Within 60 days of OHA's final notification of the end of the 24-month grace period or the next lease renewal (whichever is sooner), have the family execute a new lease that is consistent with 24 CFR 960.509 and charge the family a monthly rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit, including amounts from the operating and capital funds.

However, a PHA that owns or operates fewer than 250 public housing units may continue to lease public housing units to families whose incomes exceed the low-income limit at initial occupancy in accordance with 24 CFR 960.503. Otherwise, OHA must establish a continued occupancy policy for over-income families in the ACOP indicating which of the above will occur.

OHA Policy

For families whose income exceeds the over-income limit for 24 consecutive months, OHA will not terminate the family's tenancy and will charge the family the alternative non-public housing rent, as well as require the family to sign a new non-public housing lease in accordance with the continued occupancy policies below.

Over-Income Limit [Notice PIH 2023-03]

OHA must publish over-income limits in their ACOP and update them no later than 60 days after HUD publishes new income limits each year. The over-income limit is calculated by multiplying the very low-income limit (VLI) by 2.4, as adjusted for family size.

OHA Policy

OHA will rely on the following over-income limits. These numbers will be updated within 60 days of HUD publishing new income limits each year and will be effective for all annual and interim reexaminations once these policies have been adopted.

Family Size	1	2	3	4	5	6	7	8
Over-Income Limit								

For families larger than eight persons, the over-income limit will be calculated by multiplying the applicable very low-income limit by 2.4.

Decreases in Income [24 CFR 960.507(c)(4)]
If, at any time during the consecutive 24-month period following the initial over-income determination, OHA determines that the family's income is below the over-income limit, OHA's over-income policies no longer apply to the family. If OHA later determines that the family's income exceeds the over-income limit at a subsequent annual or interim reexamination, the family is entitled to a new 24 consecutive month period and new notices under this section.

OHA Policy
If, at any time during the 24-month period following the initial over-income determination, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with OHA policy in Chapter 9.

If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification. OHA will notify the family in writing within 10 business days of the determination that over-income policies no longer apply to them.

Initial Notice of Over-Income Status [24 CFR 960.507(c)(1); Notice PIH 2023-03]
If OHA determines the family has exceeded the over-income limit during an annual or interim reexamination, OHA must provide written notice to the family of the over-income determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit and continuing to do so for a total of 24 consecutive months will result in OHA following its continued occupancy policy for over-income families. OHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time OHA's determination that the family has exceeded the over-income limit. Exhibits 13-1 and 13-2 provide sample initial notices based on HUD's model notices.

OHA Policy
At annual or interim reexamination, if a family's income exceeds the applicable over-income limit, within 10 business days of the determination, OHA will notify the family in writing of the determination. The notice will state that if the family continues to be over-income for 24 consecutive months, the family will be subject to OHA's over-income policies. The notice will state that the family may request a hearing if the family disputes OHA's determination in accordance with OHA policies in Chapter 14. OHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other impairments.

Second Notice of Over-Income Status [24 CFR 960.507(c)(2); Notice PIH 2023-03; Notice PIH 2023-27]
OHA must conduct an income examination 12 months after the initial over-income determination, even if the family is paying flat rent, unless OHA determined the family's income fell below the over-income limit since the initial over-income determination. This includes when OHA makes an initial determination that a family is over-income during an interim reexamination. In this case OHA must conduct a second interim reexamination 12 months after the over-income determination, unless the family's income falls below the over-income limit

during the 24-month period. See Chapter 9 for OHA policies on interims for over-income families.

If OHA determines the family continues to exceed the over-income limit for 12 consecutive months, OHA must provide written notification of this 12-month over-income determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit for 12 consecutive months and continuing to do so for a total of 24 consecutive months will result in OHA following its continued occupancy policy for over-income families. Additionally, if applicable under OHA policy, the notice must include an estimate (based on current data) of the alternative non-public housing rent for the family's unit. OHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time OHA's determination that the family has exceeded the over-income limit. Exhibits 13-3 and 13-4 provide sample 12-month notices based on HUD's model notices.

OHA Policy

If a family's income continues to exceed the applicable over-income limit after 12 consecutive months, within 10 business days of the determination, OHA will notify the family in writing of the determination. The notice will state that if the family continues to be over-income for 24 consecutive months, the family will be subject to OHA's over-income policies. The notice will provide an estimate of the alternative non-public housing rent applicable to the family at the close of the 24 consecutive month period. The notice will also state that the family may request a hearing if the family disputes OHA's determination in accordance with OHA policies in Chapter 14. O HA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other impairments.

Final Notice of Over-Income Status [24 CFR 960.507(c)(3) and 960.509; Notice PIH 2023-03; Notice PIH 2023-27]

Unless OHA determined the family's income fell below the over-income limit since the second over-income determination, OHA must conduct an income examination 24 months after the initial over income determination, even if the family is paying flat rent. When OHA makes an initial determination that a family is over-income during an interim reexamination, OHA must conduct an interim reexamination 12 months after the over-income determination, and then again 12 months after the second over-income determination, unless the family's income falls below the over-income limit during the 24-month period.

If the family continues to be over-income based on this determination, OHA must provide written notification of this determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit for 24 consecutive months and that OHA will follow its continued occupancy policies for over-income families. OHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time OHA's determination that the family has exceeded the over-income limit. Exhibits 13-5 and 13-6 provide sample 24-month notices based on HUD's model notices.

OHA Policy

If a family's income exceeds the applicable over-income limit for 24 consecutive months, OHA will notify the family in writing of the determination within 10 business days of the date of the determination. OHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other

impairments. The notice will state that the family will be charged the alternative non-public housing rent in accordance with OHA continued occupancy policies and HUD regulations and provide the family's new rent amount.
The notice will also include a new non-public housing lease and inform the family that the lease must be executed by the family and OHA no later than 60 days from the date of the notice or at the next lease renewal, whichever is sooner. The family will continue to be a public housing program participant until the family executes the new non-public housing lease. The notice will also state that failure to execute the lease within this time period stated in the notice will result in termination of tenancy no more than six months after the date of the notice. OHA will permit an over-income family to execute a lease beyond this time period, but before termination of tenancy, if the over-income family pays OHA the total difference between the alternative non-public housing rent and their public housing rent dating back to the point in time that the over-income family was required to execute the new lease.

Once the family signs the new non-public housing lease, the family will no longer be a public housing participant family. The family will no longer be subject to income examinations, are precluded from participating in the resident council, and cannot participate in any programs that are only for public housing or low-income families. OHA will not provide such families with hearing or grievance rights.

The non-public housing over-income (NPHOI) lease will contain all required provisions listed at 24 CFR 960.509. The initial term of the lease will be for one year. Upon expiration of the initial lease term, the lease will not renew automatically, and subsequent leases will state renewal terms. At any time, OHA may terminate tenancy in accordance with 24 CFR 960.509(b)(11) and in accordance with state and local law.
Upon execution of the lease, the tenant will be required pay the amount of monthly tenant rent (known as the alternative non-public housing rent) determined by OHA in accordance with HUD regulations. OHA will comply with state and local law in giving the tenant written notice stating any changes in the amount of tenant rent. Charges assessed under the lease will be due in accordance with state and local law.

If an NPHOI family subsequently experiences a decrease in income after signing the NPHOI lease, the family may only be readmitted to the public housing program if they once again become an eligible low-income family and reapply to the public housing program.

PART III: TERMINATION BY 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 also has the option to terminate the tenancies of certain over income families.

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), Notice PIH 2015-19]

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:

- *Affiliated individual is defined in section 16-VII.B.*
- *Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.
- *Criminal Record* means any record or report compiled by a local, state, or federal law enforcement agency containing information related to a person's involvement in criminal activity. These records include, but are not limited to police reports, arrest

reports, conviction records, or other information maintained by law enforcement through a database.

- *Criminal Conviction* Record means a record obtained from the California Law Enforcement Telecommunication System (CLETS) of the National Crime Information Center (NCIC) which contains criminal conviction information.
- *Dating violence is defined in section 16-VII.B.*
- *Domestic violence is defined in section 16-VII.B*
- *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].
- *Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.
- *Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.
- *Household* means the family and an 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.
- *Prohibited tobacco products* are defined as products requiring the ignition of tobacco, such as (but not limited to) cigarettes, cigars, pipes, hookahs, water pipes, as well as Electronic Nicotine Delivery System (ENDS) such as, but not limited to, e-cigarettes, personal vaporizers, vape pens, e-cigars, e-hookahs, and vaping devices.
- *Restricted areas* are public housing dwelling units (except those in a mixed-finance project), public housing administrative office buildings, public housing community rooms or community facilities, public housing day care centers and laundry rooms, and all outdoor areas up to 25 feet from the buildings or units for which this policy is applicable.
- *Sexual assault is defined in section 16-VII.B.*
- *Stalking is defined in section 16-VII.B.*
- *Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

Drug Crime on and/or about 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 convictions of covered persons related to the drug-related criminal activity.

While OHA may not base a determination that an applicant or household engaged in criminal activity warranting denial, termination, or eviction on an arrest record, it may use an arrest to trigger an investigation to determine whether the participant actually engaged in disqualifying 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 convictions of household members related to the use of illegal drugs.

While OHA may not base a determination that an applicant or household engaged in criminal activity warranting denial, termination, or eviction on an arrest record, it may use an arrest to trigger an investigation to determine whether the participant actually engaged in disqualifying 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.

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, OHA employees, contractors, 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.

OHA may not base a determination that a household engaged in criminal activity warranting termination of assistance or eviction on a record of arrest(s).

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 convictions of household members related to the abuse of alcohol.

While OHA may not base a determination that an applicant or household engaged in criminal activity warranting denial, termination, or eviction on an arrest record, it may use an arrest to trigger an investigation to determine whether the participant actually engaged in disqualifying 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.

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), Instituting Smoke-Free Public Housing Rule FR-5597-F-03]

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. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

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 as articulated in section 8(A)(5) of OHA rental agreement.

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

Any smoking of prohibited tobacco products in any units covered by 24 CFR 965, subpart G, in any restricted areas, as defined by 24 CFR 966.656(a), or in other outdoor areas that OHA has designated as smoke-free.

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. The Violence Against Women Act explicitly prohibits OHA from considering incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking as "other good cause" for terminating the assistance, tenancy or occupancy rights of the victim or threatened victim of such violence as provided in the regulations [24 CFR 5.2005(c)(1)].

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 violates 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 that may include annual and interim recertification and any other OHA required inspections

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

Failure to comply with any material provision of an OHA Use of Space License Agreement pertaining to temporary relocation

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, criminal, or abusive behavior toward OHA personnel or contractors.

Abusive or violent behavior towards OHA personnel or contractors includes verbal as well as physical abuse or violence. Use of racial epithets, profanity, 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 of the unit. 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 Policy

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 Code of Civil Procedure sections 1980 *et seq*. in disposition of any property left at the rental dwelling.

Over-Income Families [24 CFR 960.507; FR6057-F-03]

The Housing Opportunity Through Modernization Act (HOTMA) of 2016 placed an income limitation on public housing tenancies. The over-income requirement states that after a family's income has exceeded the over income limit, which is set by multiplying the very low-income level for the applicable area by a factor of 2.4, equal to 120 percent of area median income (AMI), for 24 consecutive months, OHA must either terminate the family's tenancy within six months of the determination, or execute a Non-Public Housing Over Income (NPHOI) Lease within 60 days and charge the family the alternative non-public housing rent, as defined in 960.102. Over- income provisions apply to all families in the Public Housing Program, even those in the FSS program, 960.507(a)(1).

Pursuant to 960.507(c), OHA must notify the family in writing of their over-income status three times:

1. Initial Notification- at determination of over-income status,

2. Second Notification- after 12 consecutive months of over-income status which must contain the estimated alternative rent than NPHOI family must pay,

3. Third and final notification- after 24 consecutive months of over-income status.

Families may request a hearing within a reasonable time (10 days) if there is a dispute of over-income status, pursuant to 24 CFR 966(b).

If, at any time, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with OHA policy. If it is determined the previously over-income family is now below the over- income limit, the family is no longer subject to over-income provisions as of the effective date of the interim recertification. OHA will notify the family in writing that over-income policies no longer apply to them. If the family's income later exceeds the over-income limit again, the family is entitled to a new 24-month grace period, as stated in 960.507(c)(4).

If an over-income household chooses to terminate their tenancy the lease shall convert to a month-to-month term in accordance with 966.4(2)(iii) and will continue to be public housing program participants. PHAs must charge participants their choice of income-based, flat rent, or prorated rent for mixed families during the period (up to 6 months) before termination. During that time, the family may request an interim reexamination of income to potentially reduce their rent burden. However, the resulting income determination will not make the family eligible to remain in the PHP beyond the period before termination.

OHA Policy

At annual or interim reexamination, if a family's income exceeds the applicable over-income limit, OHA will document the family file and begin tracking the family's over-income status. Once a family is identified as over-income, OHA must notify the family in writing of their over-income status. Pursuant to 960.507(c), once OHA determines a family to be over-income, even if they are paying a flat rent, OHA must conduct a reexamination of family income annually instead of once every three years.

Once a family has been over-income for 24 consecutive months OHA will send a third and final notice within 30 days of determination, in accordance with 960.507(c)(3). The notice will explain that families must pay the alternative non-public housing rent, amount stated in the notice, as determined in accordance with 960.102, and be classified as a Non-Public Housing Over Income Family, or have their tenancy terminated in no more than 6 months, 960.507(d). The alternative non-public housing rent will be adjusted annually. The new NPHOI lease, with no greater than a 12-month term, must be executed within 60 days of the date of the notice, or at the next lease renewal, whichever is sooner. If an NPHOI lease is not executed within 60 days, OHA must terminate the tenancy of the family no more than 6 months after the notification.

OHA will not evict or terminate the tenancies of families whose income exceeds the income limit for program eligibility as described at 24 CFR 960.507, so long as there are no other lease compliance issues. OHA will allow for over-income families to sign NPHOI leases. NPHOI families will not be considered public housing residents, and therefore will not be required to comply with the Community Service and Self-Sufficiency Requirements, per 960.600, NPHOI families must comply with the terms of the NPHOI lease.

13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY

Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]

As an alternative to termination of the lease for criminal activity or alcohol abuse, HUD provides that OHA may consider exclusion of the culpable household member. Such an alternative can be used, by OHA, for any other reason where such a solution appears viable.

Additionally, under the Violence against Women Act (VAWA), OHA may bifurcate a lease in order to terminate the tenancy of an individual who is a tenant or lawful occupant of a unit and engages in criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking.

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 past monetary 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 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 circumstances 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 safety or peaceful and quiet enjoyment property
- 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 or (as discussed further in section 13-II.F) a victim of domestic violence, dating violence, sexual assault or stalking."
- The effects that the eviction will have on other family members who were not involved in the action or failure to act
    - The effect on the community of the termination, or of 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, including the age of the individual at the time of the conduct, as well as the family's recent history, and the likelihood of favorable conduct in the future.

While OHA may not base a determination that a household engaged in criminal activity warranting termination or eviction on an arrest record, it may use an arrest to trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, OHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. OHA may also consider:

- Any statements made by witnesses or the participant not included in the police report

- Whether criminal charges were filed
- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
- Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.

For-Cause Eviction Guidelines

The For-Cause Eviction Guidelines are intended for use by OHA's Property Management staff to the implement existing OHA occupancy policies regarding tenant evictions for causes such as drug-related, nuisance, weapons-related and/or violent criminal activities. These guidelines apply to criminal activities that threaten the health, safety or right to peaceful enjoyment of the premises by other residents...

These 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 for the Office of Property Operations or his designee is required to review all For-Cause Evictions.

Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]

HUD authorizes OHA to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

OHA Policy
In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, OHA will consider whether such household member has successfully completed a supervised drug or alcohol rehabilitation program.

For this purpose OHA will require the tenant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program

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 consider only 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 24CFR 5.105.

13-III.F. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING

This section addresses the protections against termination of assistance that the Violence against Women Act (VAWA) provides for victims of domestic violence, dating violence, sexual assault and stalking. For general VAWA requirements and OHA policies pertaining to notification, documentation, and confidentiality, see section 16-VII of this policy, where definitions of key VAWA terms are also located.

VAWA Protections against Termination [24 CFR 5.2005(c)]

VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed either as serious or repeated violations of the lease by the victim or threatened victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1) , FR Notice 8/6/13].

Limitations on VAWA Protections [24 CFR 5.2005(d) and (e), FR Notice 8/6/13]

VAWA prohibits a OHA from using domestic violence, dating violence, sexual assault, or stalking as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit the authority of OHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, or stalking so long as OHA does

not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(3) and 24 CFR 5.2003].

- VAWA does not limit the authority of OHA to terminate the tenancy of a victim of domestic violence, dating violence, sexual assault or stalking if OHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

In order to demonstrate an actual and imminent threat, OHA must have objective evidence of works, gestures, actions , or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a OHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" including but not limited to transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat" [24 CFR 5.2005(d)(3)]. Additionally, HUD regulations state that restrictions "predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents" [24 CFR 5.2005(d)(3)].

OHA Policy

In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, OHA will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or a tenant other than the victim of domestic violence, dating violence, sexual assault or stalking
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within a short period of time
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest OHA's determination that he or she is an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

Documentation of Abuse [24 CFR 5.2007]

OHA Policy
When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking claims protection under VAWA, OHA will request in writing that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this plan.

OHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. OHA will do so without regard to other protected class, such as race, color, religion, sex/gender, gender identity, sexual orientation, or marital status. In such cases OHA will document the waiver in the individual's file.

Terminating or Evicting a Perpetrator Domestic Violence

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives OHA the explicit authority to bifurcate a lease, or remove a household member from a lease, "in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing" [FR Notice 8/6/13]. Moreover, HUD regulations impose on OHA the obligation to consider lease bifurcation in any circumstances involving domestic violence, dating violence, or stalking [24 CFR 966.4(e)(9)].

Specific lease language affirming OHA's authority to bifurcate a lease is not necessary, and the authority supersedes any local, state, or federal law to the contrary. However, if OHA chooses to exercise its authority to bifurcate a lease, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance. This means that OHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [FR Notice 3/16/07]. However, perpetrators should be given no more than 30 days' notice of termination in most cases [Notice PIH 2017-08].

OHA Policy
OHA will bifurcate a family's lease and terminate the tenancy of a family member if OHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, non-culpable family members.

In making its decision, OHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to

OHA by the victim in accordance with this section and section 16-VII.D. OHA will also consider the factors in section 13.III.E Upon such consideration, OHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If OHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this ACOP. If the person removed from the lease was the only tenant eligible to receive assistance, OHA must provide any remaining tenant a chance to establish eligibility for the unit. If the remaining tenant cannot do so, OHA must provide the tenant reasonable time to find new housing or to establish eligibility for another housing program covered by VAWA.

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

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, and (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, 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),

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 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(l)(3)]

Form, Delivery, and Content of the Notice

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine 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 996.4(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 serve all notices of lease termination in compliance with Code of Civil Procedure section 1162.

All notices of lease termination will include information about the protection against termination provided by the Violence against Women Act (VAWA) for victims of domestic violence, dating violence, sexual assault, or stalking (see section 16-VII.C). OHA will also include a copy of the form HUD-50066 and a notice of VAWA rights to accompany the termination notice. Any tenant who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, sexual assault, or stalking of which the tenant or affiliated individual of the tenant is the victim will be given the opportunity to provide documentation in accordance with the policies in sections 13-III.F and 16-VII.D.

Timing of the Notice [24 CFR 966.4(l)(3)(i)]

OHA must give written notice of lease termination of:

- Fourteen (14) calendar days in the case of failure to pay rent
- Three (3) calendar days notice considering the seriousness of the situation (but not to exceed 30 calendar days)
- If the health or safety of other residents, OHA employees, contractors, 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
- Thirty (30) calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

OHA Policy

OHA will give written notice of 14 calendar days for nonpayment of rent. Additionally, OHA will give written notice of 3 calendar days for drug-related, weapons-related; violent criminal activity or any other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, OHA staff, contractors, or persons residing in the immediate vicinity of the premises;

or if any member of the household has been convicted of a felony. For all other lease terminations, OHA will give 30 day's 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)]

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 nor 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 ates, names of conference participants, and conclusions

EXHIBIT 13-1: SAMPLE NOTICE FOR OVER-INCOME FAMILIES – INITIAL NOTIFICATION FOR NPHOI FAMILY OPTION[1]

This material is based upon work supported, in whole or in part, by Federal award number NAL-C-17-094-05 awarded to NALCAB by the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. Neither the United States Government, nor any of its employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately-owned rights. Reference herein to any individuals, agencies, companies, products, process, services, service by trade name, trademark, manufacturer, or otherwise does not constitute or imply an endorsement, recommendation, or favoring by the author(s), contributor(s), the U.S. Government or any agency thereof. Opinions contained herein are those of the author(s) and do not necessarily reflect the official position of, or a position that is endorsed by, HUD or any Federal agency.

These Sample Notices include provisions required per 24 CFR 960.507(c). Anything included in brackets and italic is meant as instruction to the PHA in creating its own notices. Example: *[This text is meant as instruction to the PHA.]*

[1] This sample notice is presented verbatim from HUD's sample forms used in the HOTMA Income and Assets Training Series, available at https://www.hudexchange.info/resource/6849/hotma-sample-notices-for-overincome-families/. Only the formatting has been changed to be consistent with the formatting used throughout this ACOP.

OVER-INCOME FAMILY INITIAL NOTIFICATION

[NAME OF PHA]

Resident name:

Address:

Date:

Purpose

The purpose of this notice is to inform you that _____ *[name of PHA]* has determined that your family's income is above the income limit (over-income) according to federal rules for the public housing program. This is your **initial** (first) notice.

What happens next?

For now, your rent will continue to be calculated as usual, you will continue to be offered a choice between income-based and flat rent, and **you do not have to move**. If your family remains over-income for the following 24 consecutive months, you will no longer be eligible for assistance under the public housing program but may remain in a public housing unit paying an alternative non-public housing rent calculated under federal rules for non-public housing tenants.

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing *[address]* or requesting more information from PHA staff at: *[location]*. If you wish to request a hearing, please do so as soon as possible. If you do not wish to request a hearing, you do not need to do anything at this time.

What about changes to my income?

We will continue to reexamine your income every 12 months as usual. After each reexamination, you will receive a notification like this one if your family is still over-income.

If your family's income drops below the over-income limit before the end of the 24 consecutive-month grace period, you will no longer be considered over-income. If your family's income increases again to an amount that is over-income, you will receive another 24 consecutive month grace period.

If your income changes, contact us using the information provided below to learn the policy for requesting an interim reexamination.

[PHA: Please note that the following section is optional. The regulations only require this level of detail for the second notice.]

What if my family remains over-income in 24 consecutive months?

According to the Continued Occupancy Policy, your family may continue to reside in a public housing unit even if you remain over-income after 24 months. However, your unit will no longer receive assistance from the federal public housing program so your rent will be calculated differently.

If you choose to stay in your unit after remaining over-income for 24 consecutive months, you will:

- Pay an "alternative non-public housing rent" (currently estimated at $_____)

> The alternative rent is adjusted annually and subject to change.

> You will receive a notification with more details on what to expect next if you decide to remain in a public housing unit after 24 consecutive months of being over-income.

- Need to sign a new lease for Non-Public Housing Over-Income (NPHOI) families.

> The NPHOI lease will need to be signed no later than 60 days after receiving notification of the end of the 24-month grace period or at the next lease renewal, whichever is sooner.

[INSERT PHA CONTACT INFORMATION]

EXHIBIT 13-1: INITIAL NOTIFICATION FOR OVER-INCOME FAMILIES

HOUSING AUTHORITY OF THE CITY OF OAKLAND

«Site Name» «Site Address»
«Site Phone Number»

NOTIFICATION OF OVER-INCOME DETERMINATION

«Address»

Date:
Unit:
Resident:

Dear Head/Co-head,

According to your most recent reexamination on «First Over-Income Effective Date», your family's annual income of «Household Annual Income» has exceeded the over-income limit. As mandated by the Housing Opportunity through Modernization Act of 2016 (HOTMA), the Department of Housing and Urban Development (HUD) established an income limitation for continued occupancy in the Public Housing program (24 CFR 960.261). At the time of an interim or annual reexamination, households with a total annual income exceeding the over-income limit will be subject to this rule. Over-income families are given a grace period of two (2) consecutive years before paying a higher alternative rent equal to the greater of the Fair Market Rent (FMR) or the amount of federal subsidy for the unit.

The Housing Authority will schedule a review of your income in twelve (12) months to determine your status as an over-income household. If your household's annual income continues to exceed the over-income limit consecutively for the next two (2) years from the effective date of this notice, then you will start paying the higher alternative rent. However, at any time during this grace period, if your income falls below the over-income limit, then you will no longer be subject to the over-income rule.

IF YOUR HOUSEHOLD HAS A DECREASE IN INCOME OR CHANGE IN HOUSEHOLD COMPOSITION, PLEASE CONTACT YOUR MANAGEMENT OFFICE IMMEDIATELY AS THESE CHANGES MAY AFFECT YOUR OVER-INCOME STATUS.

This notice does not waive the Housing Authority's rights to pursue or to continue to pursue any legal action resulting from your default in the obligations under your rental agreement including, but not limited to unlawful detainer (eviction) action.

If you have any question about this notice or if you would like to dispute the accuracy of this information, please contact the management office at the number listed above.

Sincerely,

Management

EXHIBIT 13-2: SECOND NOTIFICATION FOR OVER-INCOME FAMILIES

HOUSING AUTHORITY OF THE CITY OF OAKLAND

«Site Name» «Site Address»
«Site Phone Number»

NOTIFICATION OF OVER-INCOME STATUS

«Address»

Date:
Unit:
Resident:

Dear Head/Co-head,

Please be advised that there is no change in your family's over-income status. On «First Over-Income Effective Date», your household was determined to be an over-income family because your annual income exceeded the income limitation for continued occupancy in the Public Housing program. According to your most recent reexamination on «Second Over-Income Effective Date», your household's annual income continues to exceed the over-income limit.

As mandated by the Housing Opportunity through Modernization Act of 2016 (HOTMA), the Department of Housing and Urban Development (HUD) established an income limitation for continued occupancy in the Public Housing program (24 CFR 960.261). An over-income family whose income continues to exceed the over-income limit for two (2) consecutive years must pay the higher alternative rent at the end of the grace period.

We will schedule a final income review in twelve (12) months to re-determine your family's over-income status. If your income falls below the over-income limit, then you will no longer be subject to the over-income rule. However, if there is no change and your annual household income continues to exceed the over-income limit in the next twelve (12) consecutive months, you will be obligated to pay the higher alternative rent.

The alternative rent is equal to the greater of the published Fair Market Rent (FMR) or the amount of monthly subsidy for the unit. Please refer to the chart below for an **estimate** of your new rent next year. These figures will change according to HUD's annually published FMR and subsidy amount.

Bedroom Size	Estimate Alternative Rent
1	1,747
2	2,222
3	2,888

4	**3,170**
5	**3,645**

IF YOUR HOUSEHOLD HAS A DECREASE IN INCOME OR CHANGE IN HOUSEHOLD COMPOSITION, PLEASE CONTACT YOUR MANAGEMENT OFFICE IMMEDIATELY AS THESE CHANGES MAY AFFECT YOUR OVER-INCOME STATUS.

This notice does not waive the Housing Authority's rights to pursue or to continue to pursue any legal action resulting from your default in the obligations under your rental agreement including, but not limited to unlawful detainer (eviction) action.

If you have any question about this notice or if you would like to dispute the accuracy of this information, please contact the management office at the number listed above.

Sincerely,

Management

APPENDIX 13.1 OHA FOR-CAUSE EVICTION GUIDELINES

For-Cause Eviction Guidelines

The For-Cause Eviction Guidelines are intended for use by 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 threatens the health and safety or right to peaceful enjoyment of the premises by other tenants. These guidelines do not apply to cases that involve only 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 for the Office of Property Operations 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 other related issues that follow:

- Who was the person involved?
  - Head of household or Co-tenant
  - Household member
  - Guest
- Did the head of household or co-tenant know of the incidents or involvement?
- Have there been any prior incidents of a similar nature?
- Has there been any counseling or warning given to the head of household and/or co-tenant?
- Has there been any involvement of social services providers to the family?
- Would intervention by social services providers be appropriate?
- What have been the consequences for other residents in the unit and neighbors of OHA property?
- What are the likely consequences for other residents in the unit and neighbors of 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. Any counseling meeting described in this section does not apply to any case type except for criminal activities that threaten the health, safety or right to peaceful enjoyment of the premises by other tenants.

When determined to be appropriate, the Property Manager/Property Administrator/Assistant Property Administrator (PM/PA/APA) 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 Notice

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 Notice

Thirty (30)-Day Notices are appropriate for all other matters as described above when eviction is warranted.

File Review and Approval

The Property Management personnel prepares a case outline in chronological order.

The Assistant Director consults with the Property Management personnel and will review all relevant information and forward the file to the Staff Attorney. .

The Staff Attorney will meet with Director of Property Management and make recommendation to the Deputy Executive Director

The Deputy Executive Director or designee reviews all recommendations regarding For- Cause evictions. Only after receiving the Deputy Executive Director written approval shall such cases be filed. The Staff Attorney will handle all legal inquiries pertaining to unlawful detainer matters.

Executive Director Review

In the event that the Deputy Executive Director and his 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 Policy for Public Housing Residents. This part outlines the requirements and policy 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 govern 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 to OHA residents. [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 will offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission.

Informal reviews are not required for the following circumstances [24 CFR 982.554(c)]:

- Discretionary administrative determinations by OHA
- General policy issues or class grievances
- A determination of the family unit size under OHA subsidy standards
- Failure to respond to waiting lists update requests in writing within the specified timeframes

Notice of Denial [24 CFR 960.208(a)]

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.

When denying eligibility for admission, OHA must provide the family a notice of VAWA rights as well as the HUD VAWA self-certification form (form HUD-50066) in accordance with the Violence against Women Reauthorization Act, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

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.

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 a person or persons designated by the Department Director. The designee must be a person other than the person 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.

The person conducting the informal hearing will make a recommendation to grant or deny admission and for denials OHA may elect to have the recommendation reviewed by the Executive Director or a designee for final determination on admission.

Informal Hearing Decision [PH Occ GB, p. 58]

OHA Policy

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 NON-CITIZENS

14-II.A. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [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 non-citizens 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

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

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

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)]

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 may establish an expedited grievance procedure as defined in 24 CFR 966.53. OHA must not only meet the minimal procedural due process requirements provided under the regulations, but must also meet any additional requirements imposed by local, state or federal law.

OHA grievance procedure must be included in, or incorporated by reference in, the lease.

OHA Policy

OHA grievance procedure will be incorporated by reference in the resident lease. OHA must provide at least 30 days' notice to residents and the Resident Advisory Board setting forth proposed changes to 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.

Residents and the Resident Advisory Board 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.

OHA must furnish a copy of the grievance procedure to each resident and to the Resident Advisory Board.

14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)] Section 15.0 Grievance 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:
    a. Adequate notice to the resident of the grounds for terminating the

tenancy and for eviction

b. Right of the resident to be represented by counsel

c. 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

d. A decision on the merits

- **Expedited grievance –** a procedure e established by OHA for any grievance concerning a termination of tenancy or eviction that involves:

1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of OHA's public housing premises by other residents or employees of OHA; or

2) Any drug-related or violent criminal activity on or off such premises.

- **Hearing Officer**– an impartial person or persons selected by OHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.

- **Resident** – the adult person (or persons) (other than a live-in aide)

a. 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,

b. 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 nor is said grievance procedure 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

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

OHA is located in a HUD-declared due process state. Therefore, OHA will not offer grievance hearings for lease terminations involving criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of OHA, or for violent or drug-related criminal activity on or off the premises, or criminal activity.

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 an 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:

- The names of the participants
- Dates of meeting
- The nature of the proposed disposition of the complaint and the specific reasons,
- The procedures by which a grievant can obtain a hearing if the grievant is not satisfied with the informal settlement of grievance..

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. 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. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

If a resident fails to attend the scheduled meeting, tand was unable to reschedule the hearing in advance due to the nature of the conflict, the tenant must contact OHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. OHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

14-III.E. PROCEDURES TO OBTAIN A HEARING

Requests for Hearing and Failure to Request

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.

Scheduling of Hearings [24 CFR 966.56(a)]

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled promptly for a time and place reasonably convenient to both the complainant and OHA and held before a hearing officer. 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.

OHA may wish to permit the resident to request to reschedule a hearing for good cause.

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 966.53(e)]

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 OHA action under review, or a subordinate of such person. OHA must describe their policies for selection of a hearing officer in their lease.

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 qualified current staff persons, former OHA employees, professional arbitrators, or personnel from other OHA 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.

OHA must include their policies regarding the hearing officer selection process in the tenant lease form. [24 CFR 966.4].

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 documents. If OHA does not make the document available for examination upon request by the complainant, 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.

  Hearings may be attended by the following applicable persons: OHA representative(s) and any witnesses for OHA, the resident, and any witnesses for the resident; the resident's counsel or other representative, and; 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.

Failure to Appear [24 CFR 966.56(c)]

If the complainant or OHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for a period no more than 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(d) (e)]

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(d)].

The hearing is conducted informally by the hearing officer/panel. OHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint, and to question any witnesses.

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 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(e)].

OHA Policy

OHA will record all Informal Hearings. The audio tape is available upon request.

Accommodations of Persons with Disabilities [24 CFR 966.56(f)]

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.

Limited English Proficiency (24 CFR 966.56(g)

OHA must comply with HUD's LEP Final Rule in providing language services throughout the grievance process.

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 complainant and OHA. OHA must retain a copy of the decision in the resident's folder. OHA must maintain a log of all hearing officer decisions and make that log available upon request of 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 shall be binding on OHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless OHA Board of Commissioners determines ,, that:

- The grievance does not concern OHA action or failure to act in accordance with or involving the complainant's lease on OHA regulations, which adversely affect the complainant's rights, duties, welfare or status;
- The decision of the hearing officer is contrary to applicable 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 the Executive Director or his or her designee within 10 business days of the date of the hearing officer's decision. If the Executive Director or his or her designee 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 the Executive Director or his or her designee 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, nor effect in any manner whatever, 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 is 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, OHA will employ a variety of techniques to make sure 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. P*rogram 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 OHA 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 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, 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 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 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 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.

De Minimis Errors [24 CFR 5.609(c)(4); Notice PIH 2023-27]

OHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in calculating family income. A de minimis error is an error where OHA determination of family income deviates from the correct income determination by no more than $30 per month in monthly adjusted income ($360 in annual adjusted income) per family.

OHA must take corrective action to credit or repay a family if the family was overcharged rent, including when OHA makes de minimis errors in the income determination. Families will not be required to repay OHA in instances where OHA miscalculated income resulting in a family being undercharged for rent. OHA state in its policies how it will repay or credit a family the amount they were overcharged as a result of OHA's de minimis error in income determination.

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, staff program abuse, or a de minimis error.

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 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 an 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

OHA that 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 OHA 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. This part describes the requirements and policies related to establishing and updating flat rent amounts.

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 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 ("OHA"). This part describes OHA indicators, how OHA is scored under OHA, 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 Elevated Blood Lead Level. This part describes OHA's reporting responsibilities related to children with elevated blood lead levels that are living in public housing.

Part VII: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault and stalking; and maintaining the confidentiality of information obtained from victims.

Part VIII: Conflict of Interest Policy. This part describes OHA's conflict of interest policies in connection with all OHA administered Section 8 programs.

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 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 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 setting 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 use [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 may use its current MTW utility allowance schedule at scheduled reexaminations.

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is effective after the allowance is adopted.

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 a new allowance is adopted, up to and including any utility allowance schedule developed under MTW authority.

For families on a biennial/triennial reexamination schedule, revised utility allowances will be applied on the earlier of the first anniversary date or first reexamination date following the adoption of the revised utility allowance schedule

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, 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 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 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 OHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

OHA Policy

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:

1. Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.
2. 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.

3. Notify residents of the place where OHA's documentation on which allowances and surcharges are based is available for inspection.
4. 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

16-II.A. OVERVIEW

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Flat rents are also used to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].

This part discusses how OHA establishes and updates flat rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and proration of rents for mixed families are discussed in Chapter 6.

16-II.B. FLAT RENTS [24 CFR 60.253(b) and Notice PIH 2017-23]

Establishing Flat Rents

The 2015 Appropriations Act requires that flat rents must be set at no less than 80 percent of the applicable fair market rent (FMR). Alternatively, OHA may set flat rents at no less than 80 percent of the applicable small area FMR(SAFMR) for metropolitan areas, or 80 percent of the applicable unadjusted rents for nonmetropolitan areas.

For areas where HUD has not determined a SAFMR or an unadjusted rent, OHA must set flat rents at no less than 80 percent of the FMR or apply for an exception flat rent.

The 2015 Appropriations Act permits OHA to request an exception flat rent that is lower than either 80 percent of the FMR osr SAFMR/unadjusted rent if OHA can demonstrate that these FMRs do not reflect the market value of a particular property or unit.

In order to demonstrate the need for an exception flat rent, OHA is required to submit a market analysis methodology that demonstrates the value of the unit. OHA must use HUD's rent reasonableness methodology to determine flat rents. In determining flat rents, OHA must consider the following:

- Location
- Quality
- Unit size
- Unit type
- Age of the unit
- Amenities at the property and in immediate neighborhood
- Housing services provided

- Maintenance provided by OHA
- Utilities provided by OHA and/or landlord for (comparable units in the market study)
- OHA must provide a corresponding key explaining the calculations used for determining the valuation for each factor.

  OHA must receive written HUD approval before implementing exception flat rents. PHAs with a previously approved flat rent exception request may submit a written request to extend the approved flat rents for up to two additional years, provided local market conditions remain unchanged. Detailed information on how to request exception flat rents can be found in Notice PIH 2017-23.

OHA is now required to apply a utility allowance to flat rents as necessary. Flat rents set at 80 percent of the FMR must be reduced by the amount of the unit's utility allowance, if any.

Review of Flat Rents
No later than 90 days after the effective date of the new annual FMRs/SAFMRs/unadjusted rent, OHA must implement new flat rents as necessary based changes to the FMR/SAFMR/unadjusted rent or request an exception.

If the FMR falls from year to year, OHA may, but is not required to, lower the flat rent to 80 percent of the current FMR/SAFMR/unadjusted rent.

OHA Policy
If the FMR/SAFMR/unadjusted rent is lower than the previous year, OHA will reduce flat rents to 80 percent of the current FMR/SAFMR.

Posting of Flat Rents

OHA Policy
OHA will publicly post the current Flat Rent Schedule on its web site and leasing offices.

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.

PART III: FAMILY DEBTS TO OHA

16-III.A. OVERVIEW

Families are required to reimburse OHA if they were charged less rent than required because the family either underreported or failed to report income. OHA is required to determine retroactive rent amounts as far back as OHA has documentation of family unreported income [Notice PIH 2018-18].

This part describes OHA's policies for recovery of monies owed to OHA 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 underpayments. 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 use other available collection alternatives including, but not limited to, the following:

1. Collection agencies
2. Small claims court
3. Civil law suits
4. 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 or concurrent to the execution of a repayment agreement, the family must pay 25 percent of the balance owed to OHA.

Payment Thresholds Notice PIH 2017-12 recommends that the total amount that a family must pay each month—the family's monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family's monthly adjusted income, which is considered "affordable." Moreover, Notice PIH 2017-12 acknowledges that PHAs have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

OHA Policy

If a family is paying less than 40 percent of its monthly adjusted income (MAI) in rent, the minimum monthly payment amount will be the greater of the following two amounts:

The difference between 40 percent of the family's MAI and the TTP at the time the agreement is executed $25

If a family can provide evidence satisfactory to OHA that a monthly payment amount of $25 would impose an undue hardship, OHA may, in its sole discretion, require a lower monthly payment amount.

If the family's income increases or decreases during the term of a repayment agreement, either OHA or the family may request that the monthly payment amount be adjusted accordingly.

Execution of the Agreement

OHA Policy

The head of household and spouse/co-head (if applicable) must sign and date 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.

Any court stipulated agreement or court settlement agreement negotiated by OHA and a tenant shall supersede the policy articulated above if these types of negotiated agreements have a different payment date articulated in them.

Late or Missed Payments

OHA Policy

If a payment is not received by the end of the business day on the date due, it will be considered a breach of the repayment agreement and OHA will terminate the tenancy in accordance with the policies in Chapter 13.

Any court stipulated agreement or court settlement agreement negotiated by OHA and a tenant shall supersede the policy articulated above and this section shall not apply to these types of court agreements.

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.

Repayment Agreements Involving Improper Payments

Notice PIH 2017-12 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the public housing lease that state the family's obligation to provide true and complete information at every reexamination and the grounds on which OHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to OHA the monthly payment amount specified in the agreement but must also pay to OHA the monthly tenant rent
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of tenancy

PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)

16-IV.A. OVERVIEW

The purpose of 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.

Under MTW Authority, OHA is not required to report through PHAS.

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 and that comply with VAWA confidentiality requirements.

16-V.B. RECORD RETENTION

OHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

Notice PIH 2014-20 requires OHA to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

OHA must keep confidential records of all emergency transfers requested under OHA's Emergency Transfer Plan, and the outcomes of such requests, and retain the records for a period of three years, or for a period of time as specified in program regulations [24 CFR 5.2002(E)(12)].

OHA Policy

OHA will keep the last three years of the Form HUD-50058 and supporting documentation and for at least three years after end of all documents related to a family's eligibility, tenancy, and termination.

In addition, OHA will keep the following records for at least three years:

1. 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
2. Documentation supporting the establishment of flat rents and the public housing maximum rent
3. Documentation supporting the establishment of utility allowances and surcharges
4. Accounts and other records supporting OHA budget and financial statements for the program
5. Complaints, investigations, notices, and corrective actions related to

violations of the Fair Housing Act or the equal access final rule

6. Other records as determined by OHA or as required by HUD

7. Confidential records of all emergency transfers related to VAWA requested under OHA's Emergency Transfer Plan and the outcomes of such requests

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

OHA 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 OHA may release the information collected.

OHA Policy

HA may require each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign the HUD approved OHA Authorization Release Form/Privacy Act Notice form in lieu of the 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.

Up-front Income Verification (UIV) Records

PHAs that access UIV data through HUD's 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 using 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 OHA receives from a law enforcement agency to officers or employees of 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 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 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 OHA other than under 24 CFR 5.905.

Medical/Disability Records

OHA is 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 OHA receives a verification document that provides such information, OHA should not place this information in the tenant file. OHA should destroy the document.

Documentation of Domestic Violence, Dating Violence, Sexual Assault or Stalking

For requirements and OHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault or stalking, see section 16-VII.E.

PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL

16-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e)]; Notice PIH 2017-13]

OHA has certain responsibilities relative to children with environmental intervention blood lead levels who are living in public housing.

OHA must report the name and address of a child identified as having an elevated blood lead level (EBLL)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 elevated blood lead level (EBLL) 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 elevated blood lead level.

OHA will provide written notice of each known case of a child with an elevated blood level (EBLL) to the HUD field office and to HUD's Office of Lead Hazard Control (OLHCHH) within 5 business days of receiving the information.

PART VII: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

16-VII.A. OVERVIEW

The Violence against Women Act (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the public housing program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

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

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and OHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and OHA policies are located primarily in the following sections: Chapter 3, "Eligibility" (sections 3-I.C and 3-III.F); Chapter 5, "Occupancy Standards and Unit Offers" (section 5-II.D); Chapter 8, "Leasing and Inspections" (section 8-I.B); Chapter 12, "Transfer Policy" (sections 12-III.C, 12-III.F, and 12-IV.D); and Chapter 13, "Lease Terminations" (sections 13-III.F and 13-IV.D)

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16-VII.B. DEFINITIONS [24 CFR 5.2003; FR Notice 8/6/13]

As used in VAWA:

- The term affiliated individual means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any individual, tenant or lawful occupant living in the household of that individual.
- The term bifurcate means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship

- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim
- The term *economic abuse* means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:
  - Restrict a person's access to money, assets, credit, or financial information
  - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
  - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty
- The term *economic abuse* means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:
  - Restrict a person's access to money, assets, credit, or financial information
  - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
  - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty

- The term *sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.
- The term *technological abuse* means an act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:
  - Internet enabled devices
  - Online spaces and platforms
  - Computers
  - Mobile devices
  - Cameras and imaging programs
  - Apps
  - Location tracking devices

- Communication technologies
- Any other emergency technologies

16-VII.C. NOTIFICATION [24 CFR 5.2005(a)]

Notification to Public

OHA adopts the following policy to help ensure that all actual and potential beneficiaries of its Public Housing are aware of their rights under VAWA.

OHA Policy

OHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

- A notice of occupancy rights under VAWA to program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380, see Exhibit 16-1)
- A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)
- A copy of OHA's emergency transfer plan (Exhibit 16-3)
- A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 (Exhibit 16-4)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY)

Contact information for local victim advocacy groups or service providers

Notification to Program Applicants and Residents [24 CFR 5.2005(a)(1)]

OHA is required to inform program participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

OHA must distribute a notice of VAWA rights, along with the VAWA self-certification form (HUD-5382) at each of these three junctures.

OHA Policy

VAWA information provided to applicants and participants will consist of the notices in Exhibit 16-1 and 16-2.

OHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. OHA will also include such information in all notices of denial of assistance (see Section 3.III.F).

OHA will provide all participants with information about VAWA at the time of admission (see section 8-I.B). OHA will also include information about their rights under VAWA in notices of termination of assistance. (see section 13-IV.D).

OHA is not limited to providing VAWA information at the times specified in the above policy. If OHA decides to provide VAWA information to a tenant following an incident of domestic violence, Notice PIH 2006-42 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases OHA make alternative delivery arrangements that will not put the victim at risk.

OHA Policy

Whenever OHA has reason to suspect that providing information about VAWA to a public housing resident might place a victim of domestic violence at risk, it will attempt to provide the information directly to the victim or by having victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary OHA may decide not to mail info regarding VAWA protections to the victims unit if OHA believes the perpetrator may have access to the victim's mail, unless requested to do so by the victim.

When discussing VAWA with the victim, OHA will take reasonable precautions to ensure that no one can overhear the conversation.

The victim may, but is not required, to designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

16-VII.D. DOCUMENTATION [24 CFR 5.2007]

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. OHA may extend this time period at its discretion. OHA will allow for a 10-business day extension upon request. [24 CFR 5.2007(a)]

The individual may satisfy OHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

1. A completed and signed HUD-approved certification form (HUD-5382 , Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking), which must include the name of the perpetrator, if the name is known and safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
2. A federal, state, tribal, territorial, or local law enforcement court or administrative record.
3. Documentation may be signed by the victim. or A person assisting the victim in addressing domestic violence, dating violence, sexual assault, or stalking or the effects

of such abuse may also sign. This person may be an employee, agent or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional in which the professional attests under penalty of perjury to his or her belief that the victim has experienced an incident of domestic violence, dating violence, sexual assault or stalking that meets the grounds for protection under the statute.

OHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation [VAWA 2005 final rule].

OHA Policy
Any request for documentation of domestic violence, dating violence, sexual assault or stalking will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

OHA may, in its discretion, extend the deadline for 10 business days. Factors wil be considered such as cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim's need to address health or safety issues. Any extension granted by OHA will be in writing.

Once the victim provides documentation, OHA will acknowledge receipt within 10 business days.

Conflicting Documentation [24 CFR 5.2007(e)]

In cases where OHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, OHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). OHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to OHA. OHA must honor any court orders issued to protect the victim or to address the distribution of property. Individuals have 30 calendar days to return third-party verification to OHA. If OHA does not receive third-party documentation, and OHA will deny or terminate assistance as a result, OHA must hold separate hearings for the tenants [Notice PIH 2017-08].

OHA Policy
If presented with conflicting certification documents (from members of the same household, OHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made. When requesting third-party documents, OHA will provide contact information for local

domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

If OHA does not receive third-party documentation within the required timeframe (and any extensions), OHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, OHA will hold separate hearings for the applicants or tenants.

Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]

OHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

OHA Policy

If OHA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, or stalking, OHA will document acceptance of the statement or evidence in the individual's file.

Failure to Provide Documentation [24 CFR 5.2007(c)]

In order to deny relief for protection under VAWA, a OHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as OHA may allow, OHA may deny relief for protection under VAWA.

16-VII.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to OHA regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence sexual assault or stalking, must be retained in confidence. This means that OHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

OHA Policy

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

EXHIBIT 16-1: SAMPLE NOTICE OF OCCUPANCY RIGHTS UNDER THE VIOLENCE AGAINST WOMEN ACT, FORM HUD-5380

[Oakland Housing Authority (OHA)[2]]

Notice of Occupancy Rights under the Violence Against Women Act[3]

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.[4] The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that **[insert name of program or rental assistance]** is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA."

Protections for Applicants

If you otherwise qualify for assistance under **[insert name of program or rental assistance],** you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

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[2] The notice uses OHA for housing provider but the housing provider should insert its name where OHA is used. HUD's program-specific regulations identify the individual or entity responsible for providing the notice of occupancy rights.

[3] Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

[4] Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Protections for Tenants

If you are receiving assistance under **[insert name of program or rental assistance],** you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under **[insert name of program or rental assistance]** solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator from the Household

OHA may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If OHA chooses to remove the abuser or perpetrator, OHA may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, OHA must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, OHA must follow Federal, State, and local eviction procedures. In order to divide a lease, OHA may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, OHA may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, OHA may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

1. **You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
2. **You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form, or may accept another written or oral request.
3. **You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

   OR

   You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

OHA will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

OHA's emergency transfer plan provides further information on emergency transfers, and OHA must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

OHA can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from OHA must be in writing, and OHA must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. OHA may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to OHA as documentation. It is your choice which of the following to submit if OHA asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- aA complete HUD-approved certification form given to you by OHA with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- wA record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.

- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that OHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, OHA does not have to provide you with the protections contained in this notice.

If OHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), OHA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, OHA does not have to provide you with the protections contained in this notice.

Confidentiality

OHA must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

OHA must not allow any individual administering assistance or other services on behalf of OHA (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

OHA must not enter your information into any shared database or disclose your information to any other entity or individual. OHA, however, may disclose the information provided if:

- You give written permission to OHA to release the information on a time limited basis.
- tOHA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- nA law requires OHA or your landlord to release the information.

VAWA does not limit OHA's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, OHA cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if OHA can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If OHA can demonstrate the above, OHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

For Additional Information

You may view a copy of HUD's final VAWA rule at: https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf.

Additionally, OHA must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **[insert name of program or rental assistance contact information able to answer questions on VAWA].**

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact **[Insert contact information for relevant local organizations]**.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at https://www.victimsofcrime.org/our-programs/stalking-resource-center.

For help regarding sexual assault, you may contact **[Insert contact information for relevant organizations]**

Victims of stalking seeking help may contact **[Insert contact information for relevant organizations]**.

Attachment: Certification form HUD-5382 **[form approved for this program to be included]**

EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION, FORM HUD-5382

CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, AND ALTERNATE DOCUMENTATION

U.S. Department of Housing and Urban Development

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: The Violence Against Women Act ("VAWA") protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

(1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.

(2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

(3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. Date the written request is received by victim: _____

2. Name of victim: _____

3. Your name (if different from victim's):_____

4. Name(s) of other family member(s) listed on the lease:_____

_____

5. Residence of victim: _____

6. Name of the accused perpetrator (if known and can be safely disclosed):_____

_____

7. Relationship of the accused perpetrator to the victim:_____

8. Date(s) and times(s) of incident(s) (if known):_____

_____

10. Location of incident(s):_____

In your own words, briefly describe the incident(s):

_____

_____

_____

_____

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and

you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

EXHIBIT 16-3: EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

Oakland Housing Authority

Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Emergency Transfers

In accordance with the Violence Against Women Act (VAWA),[5] the **Oakland Housing Authority (OHA)** allows tenants or participants of covered programs who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's/participant's current unit to another unit. Emergency transfers as discussed in this Plan are only those moves required as a result of an eligible claim under VAWA. The ability to request a move is available regardless of sex, gender identity, or sexual orientation.[6] The ability of OHA to honor such requests for tenants/participants currently receiving assistance, however, may depend upon 1) a preliminary determination that the she or he is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, 2) whether another dwelling unit is available, and 3) the move is safe to offer the tenant/participant for temporary or more permanent occupancy.

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[5] Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

[6] Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

This plan identifies tenants/participants who are eligible for an emergency transfer under VAWA, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants/participants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the Federal agency that oversees that OHA is in compliance with VAWA.

Covered Housing Programs

In accordance with 24 CFR 5.2003, this Emergency Transfer Plan applies to applicable HUD-covered housing programs. Covered housing programs operated or administered by OHA consist of the following:

1. Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.
2. Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.
3. Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 et seq.), with implementing regulations at 24 CFR part 574.
4. HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 et seq.), with implementing regulations at 24 CFR part 92.
5. Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability Assistance program (with regulations forthcoming).

6. Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221.
7. Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), with implementing regulations at 24 CFR part 236.
8. HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d) (with regulations at 24 CFR Chapter IX), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f) (with regulations at 24 CFR chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (with implementing regulations at 24 CFR part 882, subpart H).
9. The Housing Trust Fund (12 U.S.C. 4568) (with implementing regulations at 24 CFR part 93).

Covered housing provider refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections. OHA is the covered housing provider for this Emergency Transfer Plan. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be OHA.

Eligibility for Emergency Transfers

A tenant/participant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L as well as under

provisions of California state law such as Penal Code §273.5 is eligible for an emergency transfer:

a) if the tenant/participant expressly requests the transfer; and

b) Either:

1. The tenant/participant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit; or

2. In the case of sexual assault, the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premise during the 90-day period preceding the date of the request for transfer. (See 24 CFR § 5.2005(e)(2).)

A tenant/participant requesting an emergency transfer must expressly request the move in accordance with the procedures described in this plan.

Regardless of their compliance with the lease or participant obligations, tenants/participants may still request an emergency transfer if they meet the eligibility requirements in this section. However, qualifying for an emergency transfer does not

guarantee continued assistance under the program or a transfer to another covered housing program. The emergency transfer requirements under VAWA do not supersede any eligibility or occupancy requirements that may apply under a covered housing program. (See 24 CFR 5.2005(e)(13).)

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant/participant shall notify OHA's management office and submit a written request for a move to the property/site management office or to **1540**

Webster Street, Oakland, CA 94612. OHA will provide reasonable accommodations to this policy for individuals with disabilities.

Written Request for a Transfer

The tenant's/participant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant/participant reasonably believes that there is a threat of imminent harm from further violence if the tenant/participant were to remain in the same dwelling unit assisted under OHA's program; OR
2. A statement that the tenant/participant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

Confidentiality

OHA will keep confidential any information that the tenant/participant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant/participant gives OHA written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence Against Women Act For All Tenants/participants for more information about OHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

OHA cannot guarantee that a move request will be approved or how long it will take to process a move request. If a tenant/participant reasonably believes a proposed move would not be safe, the tenant/participant may request a move to a different unit. If a unit is available, the transferred tenant/participant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant/participant has been moved. OHA may be unable to move a tenant/participant to a particular unit if the tenant/participant has not or cannot establish eligibility for that unit.

If OHA has no safe and available units for which a tenant/participant who needs an emergency transfer is eligible, OHA will assist the tenant/participant in identifying other housing providers who may have safe units that are immediately available within 30 days to which the tenant/participant could move. At the tenant's request, OHA will also assist tenants/participants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Safety and Security of Tenants/Participants

Pending processing of the move and the actual move, if it is approved and occurs, the tenant/participant is urged to take all reasonable precautions to be safe.

Tenants/participants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants/participants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at https://ohl.rainn.org/online/.

Tenants/participants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at https://www.victimsofcrime.org/our-programs/stalking-resource-center.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, FORM HUD-5383

EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

U.S. Department of Housing and Urban Development

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

(2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records;

communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer: _____

2. Your name (if different from victim's)_____

3. Name(s) of other family member(s) listed on the lease:_____

_____

4. Name(s) of other family member(s) who would transfer with the victim:_____

_____

5. Address of location from which the victim seeks to transfer: _____

6. Address or phone number for contacting the victim:_____

7. Name of the accused perpetrator (if known and can be safely disclosed):_____

8. Relationship of the accused perpetrator to the victim:_____

9. Date(s), Time(s) and location(s) of incident(s):_____

_____

_

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. _____

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

_____

_____

_

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: _____

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____Signed on (Date) _____

PART VIII: CONFLICT OF INTEREST POLICY

16-VIII.A. OVERVIEW

Neither OHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with any of OHA's public housing programs in which any of the following classes of persons has any interest, direct or indirect, during their tenure or for one year thereafter:

1. Any present or former member or officer of the Authority (except a participant commissioner);
2. Any employee of the Authority, or any contractor, subcontractor or agent of the Authority, who formulates policy or who influences decisions with respect to the programs (except that program participants may be hired as employees of the Authority);
3. Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or
4. Any member of the Congress of the United States.

16-VIII.B. EMPLOYEES WHO ARE ALSO AUTHORITY 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 procedural standards are to be employed in all such circumstances.

1. No 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.
2. Employees of the Office of Property Management shall be responsible for reporting to the Director of Human Resources and the Director of Property Management 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 Director of Property Management for a determination.

It shall be the responsibility of the Director of Property Management to ensure that any actions or decisions taken within the Office of Property Management affecting any employee's participant status or the participant status of an employee's relative are in accordance with all applicable policies and procedures. It shall be the responsibility of the Director of Housing Management to ensure that any actions or decisions taken within the Eligibility Department affecting any applicant's status or the applicant status of an employee's relative are in accordance with all applicable policies and procedures. Both Directors 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 the Authority or their relationship to an Authority employee. As such:

1. Any time action is taken or a decision is made which affects the applicant or participant status of an Authority employee or a relative of an Authority employee in

any way, all Authority paperwork must be received and signed by the appropriate Director before the action or decision becomes effective.

2. Each initial determination of eligibility and each selection to a program of an Authority employee or a relative of an Authority employee shall be forwarded from the Director of Housing Management to the Executive Office for review and final approval. A certification by the Director of Housing Management shall accompany the file to the Executive Office stating that all determinations and actions taken have been reviewed pursuant to applicable policies and procedures.

16-VIII.C. DISCLOSURE

Member of the classes listed below must disclose their interest or prospective interest to OHA and HUD as follows:

Relation to OHA	Disclosure Required	Disclosure Frequency
OHA Board Members All Executive Office Staff All Directors All Section 8 Staff All Public Housing Staff All Asset Management Staff All Eligibility Staff All MIS Staff All Finance Staff	.O *CA Statement of Economic Interests*	Annually
Contractors Sub-contractors Agents of the Authority	• *CA Statement of Economic Interests* .P *OHA Statement of Employee and Familial Participation in Housing Authority Programs*	Upon contract with OHA, annually thereafter Upon contract with OHA, annually thereafter

16-VIII.D. DISCIPLINARY PROCEDURES

It is the policy of OHA to operate all of its programs in an ethical manner and in such a way that no group or individual shall have an unfair advantage in the receipt of OHA's programs and services. OHA will vigorously investigate any suspected violation of its Conflict of Interest policies and will cooperate with HUD's Office of Inspector General, local and OHA police and any other appropriate bodies when conducting investigations of suspected violations. Appropriate penalties shall be determined for each individual case. Available penalties include:

a. Written reprimand;
b. Suspension;
c. Probation;
d. Demotion;
e. Termination; and
f. Criminal Prosecution.

16-VIII.E. WAIVER CONFLICT OF INTEREST PROVISIONS

The conflict of interest prohibitions detailed under this section may be waived for good cause by the HUD field office.

16-VIII.F. GIFT POLICY

The Office of Property Management utilizes OHA's Gift Policy.

OHA Policy

It is the policy of OHA to operate all of its programs in an ethical manner and in such a way that no group or individual shall have an unfair advantage in the receipt of OHA's programs and services. OHA will vigorously investigate any suspected violation of its Gift Policy and will cooperate with HUD's Office of Inspector General, local and OHA police and any other appropriate bodies when conducting investigations of suspected violations. Appropriate penalties shall be determined for each individual case. Available penalties include:

a. Written reprimand;
b. Suspension;
c. Probation;
d. Demotion;
e. Termination; and
f. Criminal Prosecution.

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GLOSSARY

A. ACRONYMS USED IN SUBSIDIZED HOUSING

AAF	Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)
ACC	Annual contributions contract
ADA	Americans with Disabilities Act of 1990
BR	Bedroom
CDBG	Community Development Block Grant (Program)
CFR	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as "the regulations")
CPI	Consumer price index (published monthly by the Department of Labor as an inflation indicator)
FDIC	Federal Deposit Insurance Corporation
FHA	Federal Housing Administration
FICA	Federal Insurance Contributions Act (established Social Security taxes)
FMR	Fair market rent
FR	Federal Register
FSS	Family Self-Sufficiency (Program)
FY	Fiscal year
FYE	Fiscal year end
GAO	Government Accountability Office
GR	Gross rent
HAP	Housing assistance payment
HCV	Housing choice voucher
HQS	Housing quality standards.
HIP	Housing Information Portal
HUD	Department of Housing and Urban Development

HUDCLIPS	HUD Client Information and Policy System
IG	(HUD Office of) Inspector General
IPA	Independent public accountant
IRA	Individual Retirement Account
IRS	Internal Revenue Service
JTPA	Job Training Partnership Act
LBP	Lead-based paint
MSA	Metropolitan statistical area (established by the U.S. Census Bureau)
MTCS	Multi-family Tenant Characteristics System (now the Form HUD-50058 Sub-module of the PIC system) **NOFA** Notice of funding availability **OMB** Office of Management and Budget **PASS** Plan for Achieving Self-Support
NSPIRE	National Standards for the Physical Inspection of Real Estate
PBV	Project-based Voucher
OHA	Public housing agency
PHRA	Public Housing Reform Act of 1998 (also known as the Quality Housing and Work Responsibility Act)
PIC	PIH Information Center
PIH	(HUD Office of) Public and Indian Housing
PS	Payment standard
QC	Quality control
QHWRA	Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)
REAC	(HUD) Real Estate Assessment Center
RFP	Request for proposals
RFTA	Request for tenancy approval
RIGI	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
SEMAP	Section 8 Management Assessment Program

SRO	Single room occupancy
SSA	Social Security Administration
SSI	Supplemental security income
TANF	Temporary assistance for needy families
TR	Tenant rent
TTP	Total tenant payment
UA	Utility allowance
URP	Utility reimbursement payment

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 OHA for administration of the program. (See §982.152.)
- ***Administrative fee reserve*** (formerly "operating reserve"). Account established by OHA 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 OHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by OHA's board and included as a supporting document to OHA 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 OHA under which HUD agrees to provide funding for a program under the 1937 Act, and OHA 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 OHA program, budget authority is the maximum amount that may be paid by HUD to OHA 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 under13 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 OHA.
- ***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 OHA 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 very low income family whose annual income does not exceed the higher of (1) The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or (2) Thirty 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income for the area 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, regardless of actual or perceived sexual orientation, gender identity, or marital status.
  - 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 OHA 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 OHA under OHA 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 bases (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 OHA under the consolidated annual contributions contract for OHA program.
- ***Gender identity. Actual or perceived gender-related characteristics.***
- ***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 OHA 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 OHA, 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. ("OHA" 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 impairment; or is regarded as having such 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.
- J***urisdiction***. The area in which OHA 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 OHA.
- ***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 OHA 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, OHA 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.
- ***Non-citizen.*** 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.
- ***OHA Plan.*** The annual plan and the 5-year plan as adopted by OHA and approved by HUD. OHA's quality control sample. An annual sample of files or records drawn in an unbiased manner and reviewed by a OHA 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 OHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by OHA 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*** *(OHA)*. 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 OHA 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 OHA 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***. *A*ll 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.
- ***Sexual orientation. Homosexuality, heterosexuality or bisexuality.***
- ***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 OHA 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 OHA 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 OHA decides to allow extensions or suspensions of the voucher term, OHA administrative plan must describe how OHA determines whether to grant extensions or suspensions, and how OHA 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.
- ***National Standards for the Physical Inspection of Real Estate (NSPIRE).***
- ***Unit.*** 24 CFR 5.703(d). HUD refers to the interior components of an individual 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.
- ***Outside Areas.*** 24 CFR 5.703(c). Refers to the building site, building exterior components, and any building systems located outside the building or unit.
- ***Inside Areas.*** 24 CFR 5.703(b). Inside of HUD housing refers to the common areas and building systems that can generally be found within the building interior and are not inside a unit. (Basements, attached garages, care rooms, halls, corridors, stairs, laundry rooms, etc.)
- ***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 OHA 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 OHA 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 OHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for OHA 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 OHA 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 OHA with Voucher funding awarded to OHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

- ***Work-Eligible Household***. A family whose head, spouse, or sole member is a person that does not meet the qualification for senior nor disabled.