Administrative Plan

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GLOSSARY.....GL-1

Introduction

GUIDE TO REFERENCES CITED IN OHA'S ADMINISTRATIVE PLAN

AUTHORITIES IN THE MODEL ADMINISTRATIVE PLAN

Authority for OHA policies is derived from many sources. Primary among these sources are regulations and guidance issued by HUD. However, because OHA is an MTW agency, the Authority's Board of Commissioners may approve policies that contradict HUD regulations and guidance. California law also directs OHA policy. State law must be followed where such law exists and does not conflict with federal regulations. In the absence of legal requirements or HUD guidance, industry practice may lead to OHA policy.

HUD

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

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

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

MTW

MTW is a demonstration program that offers PHAs the opportunity to design and test innovative, locally-designed housing and self-sufficiency strategies for low-income families by allowing exemptions from existing public housing and tenant-based HCV rules and permitting PHAs to combine operating, capital, and tenant-based assistance funds into a single agency-wide funding source, as approved by HUD.

The purposes of the MTW program are to give PHAs and HUD the flexibility to design and test various approaches for providing and administering housing assistance that accomplish three primary goals:

- Reduce cost and achieve greater cost effectiveness in Federal expenditures;
- Give incentives to families with children where the head of household is working, is seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and
- Increase housing choices for low-income families.

As an MTW participant, OHA has a contract with HUD that sets the parameters within which OHA may design and test new policies. Within these parameters, OHA's Board will approve specific policies.

State Law

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

Industry Practice

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

RESOURCES CITED IN THE MODEL ADMINISTRATIVE PLAN

The model administrative plan cites several documents. Where a document or resource is cited frequently, it may be abbreviated. Where it is cited only once or twice, the model administrative plan 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 administrative plan and a list of references and document locations that are referenced in the model administrative plan or that may be helpful to you.

Abbreviations

Throughout the model administrative plan, abbreviations are used to designate certain documents in citations. The following is a table of abbreviations of documents cited in the model administrative plan. A complete list of abbreviations and acronyms can be found in the Glossary.

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
RHIIP FAQs	Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions.
VG	PIH Notice 2004-01 Verification Guidance, March 9, 2004.
HB 4350.3	Occupancy Requirements of Subsidized Multifamily Housing Programs

Resources and Where to Find Them

Following is a list of resources that are referenced in the Administrative Plan, or that provide background for the policies contained in the Plan, and the online location of each.

Document and Location
Code of Federal Regulations http://www.gpoaccess.gov/cfr/index.html
Earned Income Disregard FAQ www.hud.gov/offices/pih/phr/about/ao_faq_eid.cfm
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf
Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/eivsecguidepha.pdf
Executive Order 11063 http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm
Federal Register http://www.access.gpo.gov/su_docs/aces/fr-cont.html
General Income and Rent Determination FAQs 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-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 Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007 **http://www.hud.gov/offices/fheo/promotingfh/FederalRegistepublishedguidance.pdf**
OMB Circular A-133 http://www.whitehouse.gov/omb/circulars/a133/a133.html
PIH Notice 2002-01 (HA), Accessibility Notice http://www.hud.gov/offices/pih/publications/notices/02/pih2002-1.pdf
PIH Notice 2004-18 (HA), Verification of Social Security (SS) and Supplemental Security Income (SSI) Benefits

http://www.hud.gov/offices/pih/publications/notices/04/pih2004-18.pdf
PIH Notice 2005-01 (HA), Implementation of the Consolidated Appropriations Act (HR 4818 – H Rept 108-792), 2005 Funding Provisions for the Housing Choice Voucher Program http://www.hud.gov/offices/pih/publications/notices/05/pih2005-1.pdf
PIH Notice 2005-7 (HA), Rental Integrity Monitoring (RIM) Disallowed Costs and Sanctions Under the Rental Housing Integrity Improvement Project (RHIIP) Initiative http://www.hud.gov/offices/pih/publications/notices/05/pih2005-7.pdf
PIH Notice 2005-9 (HA), Public Housing Agency (PHA) Flexibility to Manage the Housing Choice Voucher Program in 2005 http://www.hud.gov/offices/pih/publications/notices/05/pih2005-9.pdf
Project-Based Voucher Program; Final Rule http://www.hudclips.org/sub_nonhud/cgi/pdf/20035.pdf

Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions. www.hud.gov/offices/pih/programs/ph/rhiip/faq.cfm
Verification FAQ 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 Web site is http://www.hud.gov/index.html.

Guidebooks, handbooks and other HUD resources may be found at the HUDClips Web site: http://www.hud.gov/offices/adm/hudclips/.

CHAPTER 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

The Oakland Housing Authority (OHA) receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. OHA is not a federal department or agency. A public housing agency (PHA) is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. OHA enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. 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 HCV 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 HCV Program. This part contains information about the Housing Choice Voucher program operation, roles and responsibilities, and partnerships.

Part III: OHA's Administrative Plan. This part discusses the purpose and organization of the plan and its revision requirements.

PART I: THE PHA

1-I.A. OVERVIEW

MTW Demonstration Program

The Moving to Work (MTW) Demonstration program is authorized under the Omnibus Consolidation Rescission and Appropriations Act of 1996 (Public Law 104-134,110 Stat 1321), dated April 26, 1996. This demonstration program offer public housing authorities the opportunity to design and test innovative , locally designed housing and self-sufficiency strategies for low-income families by allowing exemptions from certain public housing rules.

OHA was selected to participate in the Moving to Work (MTW) Demonstration program in 2001 and s one of 39 public housing authorities in the nation, out of approximately 3,400, participating in the MTW program. OHA executed its first MTW agreement with HUD in March of 2004. Initially, OHA executed a seven-year agreement, which would have expired on June 30, 2011. However, OHA and HUD signed the Amended and Restated Moving to Work Agreement (Agreement), which extended OHA's participation in the MTW demonstration through June 30, 2018. In December 2015, Congress authorized the extension of the MTW agreements of the 39 agencies to terminate in year 2028. This extension was critical for OHA to continue its localized housing programs and to implement various innovations that remove barriers to housing for over 16,000 households.

A copy of OHA's MTW Annual Plan and Annual Reports can be found on the OHA website at www.oakha.org .

The program rules discussed within this Administrative Plan are primarily those required by HUD. MTW policies and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard Section 8 rules and regulations apply.

1-I.B. ORGANIZATION AND STRUCTURE OF THE PHA

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by OHA 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, establishing policies under which OHA conducts business, ensuring that policies are followed by OHA staff and ensuring that OHA is successful in its mission. The board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability.

Formal actions of OHA are taken through written resolutions, adopted by the board of commissioners and entered into the official records of OHA.

The principal staff member of OHA is the executive director (ED), hired and appointed by the board of commissioners. The executive director is directly responsible for carrying out the policies established by the commissioners and is delegated the responsibility for hiring, training and supervising the remainder of OHA's staff in order to manage day-to-day operations to ensure compliance with federal and state laws and directives for the programs managed. In addition, the ED's duties include budgeting and financial planning for the agency.

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

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides guiding direction for developing strategy, defining critical success factors, searching out key opportunities, making resource allocation choices, satisfying clients and stakeholders, and making decisions.

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 PROGRAMS

OHA's Administrative Plan is applicable to the operation of the following programs:

- The Housing Choice Voucher program
- The Section 8 Homeownership program
- The Project-Based Voucher Program (Chapter 17)

HCV policies pertain to clients participating in OHA's Family Self Sufficiency program.

1-I.E. OHA'S COMMITMENT TO ETHICS AND SERVICE

As a public service agency, OHA is committed to providing excellent service to HCV program participants – families and owners – in the community. OHA's standards include:

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing – in compliance with program housing quality standards – for very low-income families while ensuring that family rents are fair, reasonable, and affordable.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities that address educational, socio-economic, recreational and other human service needs.
- Promote fair housing and the opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
- Promote a housing program that maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.
- Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.
- Create positive public awareness and expand the level of family, owner, 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 program participants informed of HCV program rules and regulations, and to advise participants of how the program rules affect them.

PART II. THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

1-II.A. OVERVIEW AND HISTORY OF THE PROGRAM

The intent of this section is to provide the public and staff with information related to the overall operation of the program. There have been many changes to the program since its inception in 1974 and a brief history of the program will assist the audience in understanding the program.

The United States Housing Act of 1937 (the "Act") is responsible for the birth of federal housing program initiatives. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing developments for low-income residents.

The Housing and Community Development (HCD) Act of 1974 created a new federally assisted housing program – the Section 8 Existing program (also known as the Section 8 Certificate program). The HCD Act represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

Under the Certificate program, federal housing assistance payments were made directly to private owners of rental housing, where this housing was made available to lower-income families. Eligible families were able to select housing in the private rental market. Assuming that the housing met certain basic physical standards of quality ("housing quality standards") and was within certain HUD-established rent limitations ("fair market rents"), the family would be able to receive rental assistance in the housing unit. Family contribution to rent was generally set at 30 percent of the family's adjusted income, with the remainder of the rent paid by the program.

Another unique feature of the Certificate program was that the rental assistance remained with the eligible family, if the family chose to move to another privately owned rental unit that met program requirements (in contrast to the public housing program where the rental assistance remains with the unit, should the family decide to move). Consequently, the Certificate program was characterized as tenant-based assistance, rather than unit-based assistance.

The Housing and Community Development (HCD) Act of 1987 authorized a new version of tenant-based assistance – the Section 8 Voucher program. The Voucher program was very similar to the Certificate program in that eligible families were able to select housing in the private rental market and receive assistance in that housing unit.

However, the Voucher program permitted families more options in housing selection. Rental housing still had to meet the basic housing quality standards, but there was no fair market rent limitation on rent. In addition, family contribution to rent was not set at a limit of 30 percent of adjusted income. Consequently, depending on the actual rental cost of the unit selected, a family might pay more or less than 30 percent of their adjusted income for rent.

From 1987 through 1999, public housing agencies managed both the Certificate and Voucher tenant-based assistance programs, with separate rules and requirements for each. From 1994 through 1998, HUD published a series of new rules, known as "conforming" rules, to more closely combine and align the two similar housing programs, to the extent permitted by the law.

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act – was signed into law. QHWRA eliminated all statutory differences

between the Certificate and Voucher tenant-based programs and required that the two programs be merged into a single tenant-based assistance program, now known as the Housing Choice Voucher (HCV) program.

The HCV program was modeled closely on the pre-merger Voucher program. However, unlike the pre-merger Voucher program, the HCV program requires an assisted family to pay at least 30 percent of adjusted income for rent.

The transition of assistance from the Certificate and Voucher programs to the new HCV program began in October 1999. By October 2001, all families receiving tenant-based assistance were converted to the HCV program.

1-II.B. HCV PROGRAM BASICS

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. OHA is afforded choices in the operation of the program that are included in its Administrative Plan, a document approved by the board of commissioners of OHA. Because OHA is an MTW agency, its range of choices is much broader than non-MTW PHAs.

The HCV program offers mobility to eligible families because they may search for suitable housing anywhere in OHA's jurisdiction and may also be eligible to move under portability to other PHAs' jurisdictions.

When a family is determined to be eligible for the program and funding is available, OHA issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, OHA will enter into a contract with the owner and the family will enter into a lease with the owner. Each party makes their respective payment to the owner so that the owner receives full rent.

Even though the family is determined to be eligible for the program, the owner has the responsibility of approving the family as a suitable renter. OHA continues to make payments to the owner as long as the family is eligible and the housing unit continues to qualify under the program.

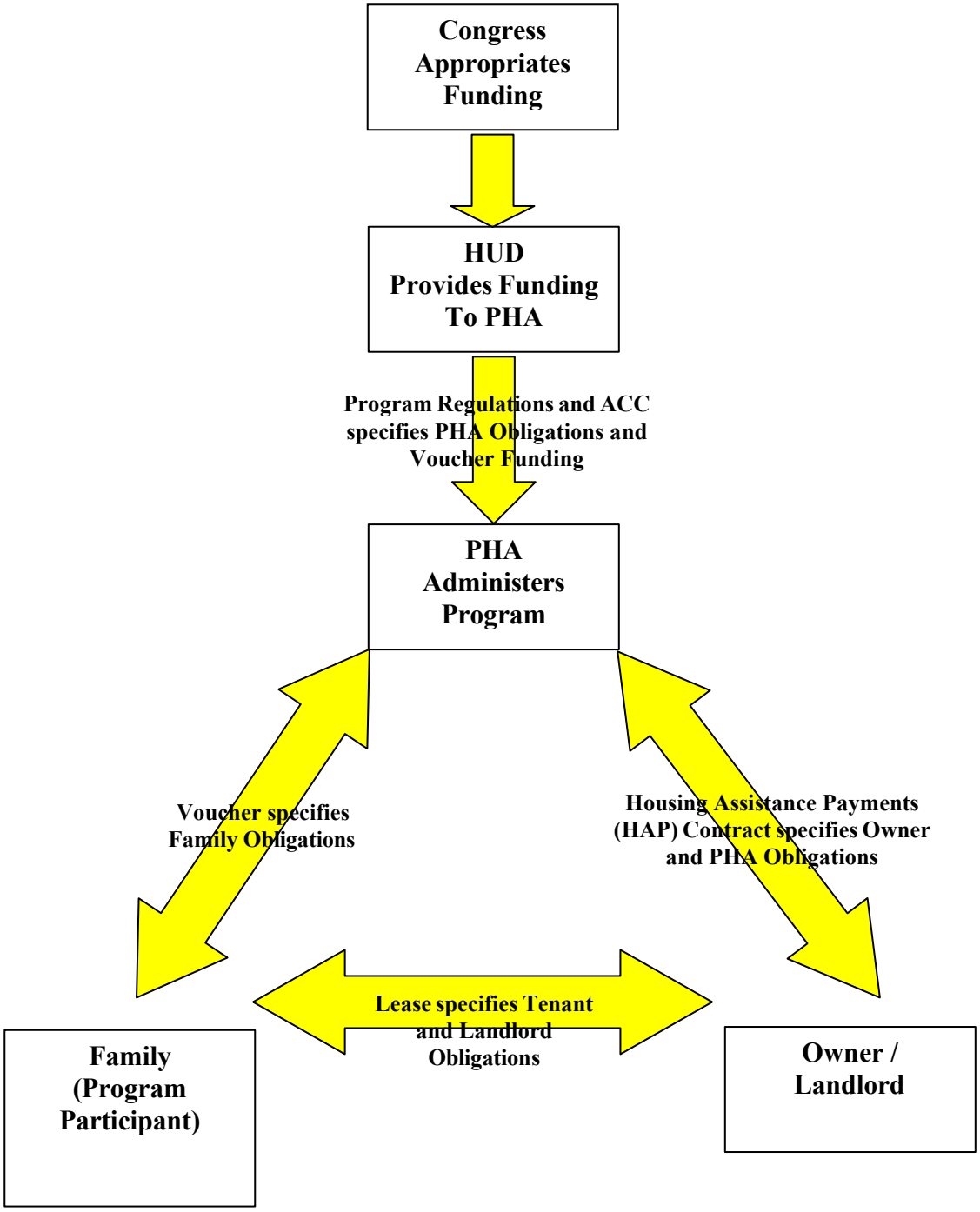
1-II.C. THE HCV PARTNERSHIPS

To administer the HCV program, OHA enters into a contractual relationship with HUD. OHA also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit.

For the HCV program to work and be successful, all parties involved – HUD, OHA, the owner, and the family – have important roles to play. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the program.

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

The HCV Relationships:



What does HUD do?

HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices and other guidance to implement HCV housing program legislation passed by Congress;
- Allocate HCV program funds to PHAs;
- Provide technical assistance to PHAs on interpreting and applying HCV program requirements;
- Monitor PHA compliance with HCV program requirements and PHA performance in program administration.

What does OHA do?

OHA administers the HCV program under contract with HUD and has the following major responsibilities:

- Establish local policies;
- Review applications from interested applicant families to determine whether applicants are eligible for the program;
- Maintain waiting list and select families for admission;
- Issue voucher to selected family and, if necessary, assist the family in finding a place to live;
- Conduct outreach to owners, with special attention to owners outside areas of poverty or minority concentration;
- Approve the rental unit (including assuring compliance with housing quality standards and rent reasonableness), the owner, and the tenancy;
- Make housing assistance payments to the owner in a timely manner;
- Ensure that families and their rental units continue to qualify under the program;
- Ensure that owners and families comply with program rules;
- Provide families and owners with prompt, professional service;
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the PHA's administrative plan, and other applicable federal, state and local laws.

What does the Owner do?

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine if they will be good renters.
    - OHA can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
    - The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.
- Comply with the terms of the Housing Assistance Payments contract, executed with OHA;
- Comply with all applicable fair housing laws and discriminate against no one;
- Maintain the housing unit by making necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

What does the Family do?

The family has the following responsibilities:

- Provide OHA with complete and accurate information, determined by OHA to be necessary for administration of the program;
- Make their best and most timely efforts to find a place to live that is suitable for them and that qualifies for 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 violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify OHA and the owner before moving or termination the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify OHA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

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

1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Section 8 Project-Based (PBV) Voucher Program

PART III. THE HCV ADMINISTRATIVE PLAN

1-III.A. OVERVIEW AND PURPOSE OF THE PLAN

The administrative plan is required by HUD. The purpose of the administrative plan is to establish policies for carrying out the programs in a manner consistent with HUD requirements and local goals and objectives contained in OHA's agency plan. This administrative plan is a supporting document to OHA's agency plan, and is available for public review as required by CFR 24 Part 903.

This administrative plan is set forth to define OHA's local policies for operation of the housing programs in the context of federal laws and regulations. All issues related to Section 8 not addressed in this document are governed by such federal regulations, HUD handbooks and guidebooks, notices and other applicable law. The policies in this administrative plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

OHA is responsible for complying with all changes in HUD regulations pertaining to the HCV program. If such changes conflict with this plan, HUD regulations will have precedence.

Administration of the HCV program and the functions and responsibilities of OHA staff shall be in compliance with OHA's personnel policy and HUD's Section 8 regulations as well as all federal, state and local fair housing laws and regulations.

MTW Demonstration Program

The program rules discussed within this Administrative Plan are primarily those required by HUD. MTW policies and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard Section 8 rules and regulations apply.

1-III.B. CONTENTS OF THE PLAN (24CFR 982.54)

HUD regulations contain a list of what must be included in the administrative plan. The administrative plan must cover OHA policies on these subjects:

- Selection and admission of applicants from OHAs waiting list, including any admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the waiting list (Chapter 4);
- Issuing or denying vouchers, including OHA policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means 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, the administrative plan must describe how OHA determines whether to grant extensions or suspensions, and how OHA determines the length of any extension or suspension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to OHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);
- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12) ;
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to OHA of amounts the family owes OHA (Chapter 16);

- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- OHA screening of applicants for family behavior or suitability for tenancy (Chapter 3).

New Approach to Policy Development

HUD has developed an approach to monitoring and policy development that requires PHAs to establish policy for those purposes.

A primary focus of HUD's Rental Integrity Monitoring (RIM) program was consistency – consistency in how PHAs conduct their business and in how HUD monitors PHA activities. HUD expects that all staff will be consistent in the procedures they follow and the calculations they make and that their actions will be consistent with OHA's administrative plan.

HUD makes a distinction between:

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

HUD expects PHAs to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies OHA has adopted. OHA's administrative plan is the foundation of those policies and procedures. HUD's new directions require, more than ever, that PHAs make policy choices to provide guidance to staff and consistency to program applicants and participants.

Following HUD guidance, even though it is not mandatory, provides a PHA with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If OHA adopts an alternative strategy, it must make its own determination that the alternative approach is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than HUD's safe harbor, but PHAs should carefully think through those decisions.

During the term of the MTW demonstration, OHA will be evaluated by HUD on the basis of its Annual MTW Report, in lieu of the Public Housing Assessment System (PHAS) or its successor system (except for reasonable physical inspections in accordance with this Agreement), and the Section 8 Management Assessment Program (SEMAP) and other program evaluation requirements, except as otherwise provided in OHA MTW Agreement. OHA will submit an Annual MTW Report to HUD in lieu of any other reports during the term of the demonstration.

1-III.C. UPDATING AND REVISING THE PLAN

OHA will revise this administrative plan as needed to comply with changes in HUD regulations and activities implemented under OHA's MTW authority. The original plan and any changes must be approved by the board of commissioners of the agency.

OHA will review and update the plan 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 PHAs to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of OHA's housing choice voucher (HCV) 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 HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007, in the *Federal Register.*

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require PHAs to treat all applicants and participants 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
- The Violence Against Women Act (VAWA)
- Any applicable State laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

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

2-I.B. NONDISCRIMINATION

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

OHA does not discriminate on the basis of race, color, religion, sex, gender identity, gender expression, national origin, ancestry, familial status, source of income, disability, medical condition, age, occupational status, genetic information, marital status, sexual orientation, association with a member of a protected class, engagement in a protected activity, sex – pregnancy, status as a VAWA abuse survivor, 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.

OHA Policy

OHA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher 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 participant toward or away from a particular area based 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 individuals with disabilities shall have equal access to available services, programs, and activities offered. Such appropriate measures include, but are not limited to:

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

Providing Information to Families

OHA will take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, OHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract, and requires compliance with VAWA and its implementing regulations.

Discrimination Complaints

OHA Policy

If an applicant or participant believes that any family member has been discriminated against by a PHA or an owner, the family should advise OHA. HUD requires OHA to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. Accordingly, OHA will assist any family that believes they have suffered illegal discrimination by providing them copies of the appropriate housing discrimination forms. OHA will also assist families in completing the forms, if requested. The address of the nearest Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity will also be provided, as well as the California Department of Fair Employment and Housing [24 CFR 982.304]. Complaints can also be filed at online at https://www.hud.gov/fairhousing/fileacomplaint.

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 PIH 2014-20]

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 HCV program.

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

> "If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the OHA 504/ADA Coordinator."

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

OHA will display posters and other housing information and signage in locations throughout OHA's office in such a manner as to be easily readable from a wheelchair.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

A reasonable accommodation is an adjustment made to a rule, policy, practice, or service that allows a person with a disability to have equal access to the HCV program. The types of reasonable accommodations the PHA can provide include changes, exceptions, or adjustments to a rule, policy, practice, or service.

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 modify normal procedures to 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
- Using higher payment standards or an exception payment standard of more than 120 percent of the FMR if the PHA determines this is necessary for a family that includes a person with a disability
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit
- 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. There must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

2-II.D. VERIFICATION OF DISABILITY

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

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

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

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to 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 [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

- 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 11.
- Medical records will not be accepted or retained in the participant file.

- In the event that the PHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the PHA will destroy it. In place of the information, the PHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

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

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

- The request was made by or on behalf of a person with a disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the PHA, or fundamentally alter the nature of the PHA'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 the number of employees, type of facilities and size of budget, type of operation 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, the PHA may enter into discussion and negotiation with the family, request more information from the family, or may

require the family to sign a consent form so that the PHA may verify the need for the requested accommodation.

OHA Policy

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

If OHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of the PHA's operations), the notice will inform the family of the right to appeal OHA's decision through an informal hearing (if applicable, see Chapter 16).

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

If OHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, OHA will notify the family, in writing, of its determination within 15 business days from the date of the most recent discussion or communication with the family**.** The notice will inform the family of the right to appeal OHA's decision through an informal hearing (if applicable, see Chapter 16).

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. If the extra bedroom is not being used for intended purpose, OHA must reduce the subsidy standard and corresponding payment standard at the family's next annual recertification. OHA may take further action, if it believes that any family obligations under 24 CFR Section 982.551 were violated. [Notice PIH-2009-22]

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. Note HUD Housing Quality Standard (HQS) §982.401 (d) (2) (i) & (ii), a living room can be used as a sleeping room. A participant family needs to make use of all available living space before the Housing Authority will consider increasing the subsidy for a family.

Requests for Reasonable Accommodation that have previously been denied will not be reviewed again before six months has passed unless there has been a material change to the nature of the request.

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.

OHA Policy

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

To meet the needs of persons with vision impairment, large-print versions of key program documents 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 plan 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 HCV program.

When issuing a voucher to a family that includes an individual with disabilities, the PHA will include a current list of available accessible units known to the PHA and will assist the family in locating an available accessible unit, if necessary.

In general, owners must permit the family to make reasonable modifications to the unit. However, the owner is not required to pay for the modification and may require that the unit be restored to its original state at the family's expense when the family moves.

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 982.552 (2)(iv)]

When applicants with disabilities are denied assistance, the notice of denial must inform them of OHA's informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process.

When a participant family's assistance is terminated, the notice of termination must inform them of OHA's informal hearing process and their right to request a hearing and reasonable accommodation.

When reviewing reasonable accommodation requests, OHA must consider whether any mitigating circumstances can be verified to explain and 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.

In addition, OHA must provide any reasonable accommodations necessary for persons with disabilities to participate in the hearing process.

PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2-III.A. OVERVIEW

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

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 Administrative Plan, LEP persons are any program applicants and participants or their authorized representative who identify themselves as persons who have a limited ability to read, write, speak or understand English. In all cases, OHA will provide LEP persons with LEP services whenever they are associated with programs operated by OHA. OHA will take affirmative steps to communicate with people who need services or information in a language other than English.

In order to determine the level of access needed by LEP persons, 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 HCV 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; 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.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by OHA. The interpreter may be a family member or friend over 18 years of age.

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 Plan to 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 8.3 100.201]

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

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

The phrase "physical or mental impairment" includes:

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

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

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

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

The definition of a person with disabilities does not include:

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

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

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

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

EXHIBIT 2-2: AFFIRMATIVELY FUTHERING FAIR HOUSING IN THE HOUSING CHOICE VOUCHER-FAMILY SELF-SUFFICIENCY (HCV FSS) PROGRAM

Under MTW authority, OHA may operate any of its existing self-sufficiency and training program, including its HCV FSS or any successor programs exempt from certain HUD program requirements. These may include those requirements governing program size or participation, including whether to establish escrow account or other rent incentives and whether to establish mandatory self-sufficiency participation requirements. If OHA received dedicated funding for an FSS coordinator, such funds must be used to employ a self sufficiency coordinator. In developing and operating such programs, OHA is authorized to establish strategic relationships and partnership with local private and public agencies and service providers to leverage expertise and funding. However, notwithstanding the above, any funds granted pursuant to a competition must be used in accordance with the NOFA and the approved applications and work plan. This authorization waives certain provisions of Section 23 of the 1937 Act and 24 CFR 984 as necessary to implement the Agency's Annual MTW Plan.

OHA will operate a Family Self-Sufficiency program for HCV participants. OHA carries out the following activities to affirmatively further fair housing in our HCV FSS program:

- Offers search assistance and counseling to HCV participant families,
- Publishes informational news letters and offers fair housing briefings and educational workshops for HCV participant families and landlords,
- Utilizes resources from committed partnerships with local multi-cultural community-based organizations that provide culturally sensitive housing and homeownership assistance programs,
- Conducts targeted FSS marketing to reach qualified participant families,
- Offers oral interpretation for a variety of voluntary services including FSS,
- Offers key FSS documents translated from English into Cantonese, Spanish and Vietnamese,
- Develops affordable homes for purchase throughout the city of Oakland,
- Offer a telephone interpretation service for translation in over 150 languages,
- Offer TTD (text telephone display) communications,
- Offers a Section 8 HCV Homeownership program with a full time homeownership coordinator on staff that works closely with our FSS Coordinators.OHA will conduct outreach and notification to existing FUP participants to recruit FUP youth to participate in the FSS program and explain the requirements and expectations of participation including termination of the FUP youth voucher as described in 24 CFR 984.201(d)(9) (see PIH 2016-01)

Per PIH Notice 2016-01, all provisions of the notice will be implemented and be in effect until amended, superseded or rescinded.

EXHIBIT 2-3: AFFIRMATIVELY FUTHERING FAIR HOUSING IN THE SECTION 8 FAMILY UNIFICATION PROGRAM (FUP) PROGRAM

OHA will operate a Section 8 Family Unification Program (FUP) in partnership with the Alameda County Social Services Agency's Department of Children and Family Services (CFS). In administering the Family Unification Program, OHA will carry out the following activities to affirmatively further fair housing for FUP program participants:

- Identify and ensure certification of FUP eligible families and youth that may be on OHA's waiting list and ensure that the family or youth maintain their original position on the waiting list after certification,
- Appropriately place all FUP eligible families and youth referred from CFS on the HCV waiting list in order of first come, first served,
- Informing applicants on how to file a fair housing complaint including the provision of the toll free number for Housing Discrimination Hotline: 1–800–669–9777 and the Federal Information Relay Service at (800)-887-8339,
- Waive the residency requirement for admission and portability when selecting eligible families and youth for FUP,
- Offer search assistance and housing counseling to FUP participant families.

Additionally OHA also:

- Publishes informational news letters and offer fair housing briefings and educational workshops for all HCV participant families and landlords,
- Utilizes resources from committed partnerships with local multi-cultural community-based organizations that provide culturally sensitive housing and homeownership assistance programs,
- Offers oral interpretation for a variety of voluntary services including FSS,
- Develops affordable homes for purchase throughout the city of Oakland,
- Offer a telephone interpretation service for translation in over 150 languages,
- Offers TTD (text telephone display) communications,
- Offers a Section 8 HCV Homeownership program with a full time homeownership coordinator on staff.

EXHIBIT 2-4: AFFIRMATIVELY FURTHERING FAIR HOUSING IN THE ADMINISTRATION OF SECTION 8 HOUSING CHOICE VOUCHERS FOR NON-ELDERLY DISABLE HOUSEHOLDS

In administering Section 8 Housing Choice Vouchers for Non Elderly Disabled Households, OHA will carry out the following activities to affirmatively further fair housing:

- Examine its programs or proposed programs;
- Identify any impediments to fair housing choice within those programs;
- Address those impediments in a reasonable fashion in view of the resources available;
- Work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require OHA's involvement;
- Maintain records reflecting these analyses and actions; and
- Informing applicant on how to file a fair housing complaint including the provision of the toll free number for Housing Discrimination Hotline: 1–800–669–9777 and the Federal Information Relay Service at (800)-887-8339, and providing the link to the webpage to file a VAWA/fair housing complaint: https://www.hud.gov/fairhousing/fileacomplaint .

Additionally OHA also:

- Offers search assistance and housing counseling to HCV applicant and participant families;
- Publishes informational news letters and offer fair housing briefings and educational workshops for HCV participant families and landlords;
- Has established partnerships with local multi-cultural community-based organizations that provide culturally sensitive housing services and when requested, assist program applicants and participants to gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of continued participation in the program;
- Offer a telephone interpretation service for translation in over 150 languages;
- Offers TTD (text telephone display) communications.

To assist on accessibility issues for persons with disabilities, OHA:

- Has identified public and private funding sources to assist participants with disabilities in covering the costs of structural alterations and other accessibility features that are needed as accommodations for their disabilities;
- Will in accordance with rent reasonableness requirements, approve a higher rent to owners that provide accessible units with structural modifications for persons with disabilities; and
- Will provide technical assistance, through referrals to local fair housing and equal opportunity offices, to owners interested in making reasonable accommodations or units accessible to persons with disabilities.

Chapter 3

ELIGIBILITY

INTRODUCTION

OHA is responsible for ensuring that every individual and family admitted to the HCV 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 HCV program:

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

This chapter contains three parts:

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

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

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

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 process to explore and test innovative methods of delivering HCV program assisted housing 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 Section 8 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 assisted 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 982.201(c), FR Notice 02/03/12; Notice PIH 2014-20]

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

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

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

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

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

Gender Identity means actual or perceived gender characteristics

Sexual Orientation means homosexuality, heterosexuality, or bisexuality.

In addition, for categorizing family as defined above, the terms disabled family, elderly family and near-elderly family (per 24 CFR 5.403) are:

Disabled family means a family whose head (including co-head), spouse or sole member is a person with a disability.

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

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

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 assisted 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 [24 CFR 982.315]

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

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault or stalking, the PHA 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-IX.D of this plan.)
- If a court determines the disposition of property between members of the assisted family in a, the PHA is bound by the court's determination of which family members continue to receive assistance. There can only be one subsidy and OHA will consider a 50-50 decision to be a non-decision.

OHA Policy

The voucher is not an automatically transferable document.

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

If a family breaks up into two otherwise eligible families while receiving assistance, OHA will determine if the remaining members will continue to be assisted.
If family members are forced to leave the unit because of actual or threatened domestic violence, dating violence, sexual assault or stalking by a spouse or other members of the household, OHA may terminate the HAP contract for the original assisted unit and transfer the assistance to the family members forced to leave.

In the absence of a judicial decision or an agreement among the original family members, OHA will determine which family will retain their placement on the waiting list, or will continue to receive assistance. In making its determination, OHA will take into consideration the following factors:

(1) the interest of any minor children, including custody arrangements,

(2) the interest of any ill, elderly, or disabled family members,

(3) the interest of any family member who is a victim of domestic violence, dating violence, or sexual assault stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse,

(4) any possible risks to family members as a result of criminal activity, and

(5) the recommendations of social service professionals.

OWNER NOTIFICATION

- If any family member is removed from the voucher for any reason, OHA will provide the owner with a notification regarding the change in household composition.
- If the family continues to receive assistance with an OHA-approved change to the head of household, OHA will transfer the assistance to the new head of household.

Remaining Member of a Tenant Family [24 CFR 5.403]

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

If dependents are the only "remaining members of a tenant family" and there is no family member able to assume the responsibilities of the head of household, see **Chapter 6, 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 cohead or spouse.

OHA Policy

The family may designate any qualified family member as the head of household. A qualified family member means a person that meets all program eligibility 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, COHEAD AND OTHER ADULT

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

OHA Policy

A minor who is emancipated under state law may be designated as a spouse or cohead.

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

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

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

Joint Custody of Dependents

OHA Policy

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

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. The 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, an IRS return, school or medical enrollment forms from a verified third party source, or other federal or state government assistance enrollment forms showing which family has claimed the child

3-I.G. FULL-TIME STUDENT [24 CFR 5.603, HVC GB p. 5-29]

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

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

See Section 3-II.E for additional policies applicable to Students Enrolled in Institutions of Higher Education.

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

Elderly Persons

An *elderly person* is a person who is at least 62 years of age.

Near-Elderly Persons

A *near-elderly person* is a person who is at least 50 years of age but below the age of 62.

Elderly Family

An *elderly family* is one in which the head, spouse, cohead, or sole member is an elderly person. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403, FR Notice 02/03/12]

Persons with Disabilities

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

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

Disabled Family

A *disabled family* is one in which the head, spouse, or cohead is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6.

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 terminating assistance following the policies in Chapter 12.

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 the premises [24 CFR 966.4(f)].

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

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

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted unit more than 50 percent of the time, are not subject to the time limitations of guests as described above, nor are they eligible for additional subsidy.

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

Non-household members who represent the unit's address as their residence address for receipt of benefits or other purposes will be considered unauthorized occupants.

Participants can not violate their terms of their lease if the lease is more restrictive than the Authority's guest policies.

3-I.K. FOSTER CHILDREN AND FOSTER ADULTS

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

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

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

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

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401.

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

3-I.L. ABSENT FAMILY MEMBERS

Individuals may be absent from the family, either temporarily or permanently, for a variety of reasons including educational activities, placement in foster care, employment, 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 assisted unit for 60 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 60 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 Cohead

An employed head, spouse, or cohead absent from the unit more than 60 consecutive days due to employment will continue to be considered a family member.

Family Members Permanently Confined for Medical Reasons [HCV GB, p. 5-22]

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

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

Return of Permanently Absent Family Members

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

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 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 supportive services [24 CFR 5.403].

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

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

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 of the family's choosing, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member.

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

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-2012-33]

OHA will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 982.316(b)]:

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

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

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

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.

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 11.

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 HCV 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.

Area median income is determined by HUD, with adjustments for smaller and larger families. 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 982.201 and Notice PIH 2023-27]

Income limits are used for eligibility only at admission. Eligibility is established by comparing the annual income of an applicant to the applicable income limit for their family size. 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.. To be income-eligible, a family must be one of the following:

- A *very low-income* family
- A *low-income* family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4]

  OHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were issued a voucher.
- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173
- A low-income or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101

HUD permits PHAs to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the PHA plan and the consolidated plans for local governments within the PHA's jurisdiction. OHA has not established any additional categories of eligible low-income families.

Using Income Limits for Targeting [24 CFR 982.201]

At least 75 percent of the families admitted to the PHA's program during a PHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the PHA demonstrates that it has made all required efforts, but has been unable to attract an adequate number of qualified extremely low-income families.

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not subject to the 75 percent restriction.

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 noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance.

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

Declaration [24 CFR 5.508]

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, cohead, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

U.S. Citizens and Nationals

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

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

Eligible Noncitizens

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

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

Ineligible Noncitizens

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

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

Mixed Families

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

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

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

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

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

Informal hearing procedures are contained in Chapter 16.

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

For new occupants joining the resident family, OHA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first.

If an individual qualifies for a time extension for the submission of required documents, OHA must grant such an extension for no more than 30 days [24 CFR 5.508(h)].

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

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

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218 Notice PIH 2012-10]

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and they must provide the documentation necessary to verify each SSN. If a child under age 6 has been added to an applicant family within 6 months prior to voucher issuance, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of the effective date of the initial HAP contract. 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 household. 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.

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

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

The PHA must accept the following documentation as acceptable evidence of the social security number:

An original SSN card issued by the Social Security Administration (SSA)

An original SSA-issued document, which contains the name and SSN of the individual

An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual, along with other identifying information of the individual

Such other evidence of the SSN as HUD may prescribe in administrative instructions

OHA may only reject documentation of an SSN provided by a applicant if the document is not an original document, if the original document has been altered, mutilated, or is not legible, or if the document appears to be forged.

OHA Policy

OHA will explain to the applicant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the PHA within 90 days.

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. If the applicant fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the PHA will deny eligibility of the applicant family..

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. Under these conditions, the applicant household may become a participant, as long as the required documentation verifying issuance of a SSN for the child is provided to OHA 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

In the case of Moderate Rehabilitation Single Room Occupancy (SRO) individuals, the required documentation must be provided within 90 calendar days from the date of admission into the program. The PHA must grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen.

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

3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230, HCV GB, p. 5-13]

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

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.

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 in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3) and 24 CFR 5.232(a)].

However, this does not apply if the applicant or participant, or any member of their family, evokes 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 has established a policy that the family's revocation of consent to allow OHA to access records from financial institutions will result in denial of admission.

3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612 and FR Notice 4/10/06]

Section 327 of Public Law 109-115 and the implementing regulation at 24 CFR 5.612 established new restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's eligibility.

The new law does not apply to students who reside with parents who are applying to receive HCV assistance. It is limited to students who are seeking assistance on their own, separately from their parents.

Definitions

In determining whether and how the new eligibility restrictions apply to a student, the PHA will rely on the following definitions [FR 4/10/06, p. 18148].

Dependent Child

In the context of the student eligibility restrictions*, dependent child* means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse, who is under 18 years of age, or

is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

Independent Student

OHA Policy

OHA will consider a student "independent" from his or her parents and the parents' income will not be considered when determining the student's eligibility if the following four criteria are all met:

The individual is of legal contract age under state law.

The individual has established a household separate from his/her parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of independent student.

To be considered an *independent student* according to the Department of Education, a student must meet one or more of the following criteria:

Be at least 24 years old by December 31 of the award year for which aid is sought

Be an orphan or a ward of the court through the age of 18

Be a veteran of the U.S. Armed Forces

Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)

Be a graduate or professional student

Be married

The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.

The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

OHA will verify that a student meets the above criteria in accordance with the policies in Section 7-II.E.

Institution of Higher Education

The PHA will use the statutory definition under section 102 of the Higher Education Act of 1965 to determine whether a student is attending an *institution of higher education* (see Exhibit 3-2).

Parents

OHA Policy

For purposes of student eligibility restrictions, the definition of *parents* includes biological or adoptive parents, stepparents (as long as they are currently married to the biological or adoptive parent), and guardians (e.g., grandparents, aunt/uncle, godparents, etc).

Veteran

OHA Policy

A *veteran* is a person who served in the active military, naval, or air service and who was discharged or released from such service under conditions other than dishonorable.

Determining Student Eligibility

If a student is applying for assistance on his/her own, apart from his/her parents, the PHA must determine whether the student is subject to the eligibility restrictions contained in 24 CFR 5.612. If the student is subject to those restrictions, the PHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her parents or the student's parents are income eligible for the program, and (3) the "family" with which the student is applying is collectively eligible for the program.

OHA Policy

For any student who is subject to the 5.612 restrictions, OHA will:

Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program

Determine whether the student is independent from his/her parents in accordance with the definition of *independent student* in this section

Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program

If OHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, OHA will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-III.B.

Determining Parental Income Eligibility

OHA Policy

For any student who is subject to the 5.612 restrictions and who does not satisfy the definition of *independent student* in this section, OHA will determine the income eligibility of the student's parents as follows:

If the student's parents are married and living together, OHA will obtain a joint income declaration and certification of joint income from the parents.

If the student's parent is widowed or single, OHA will obtain an income declaration and certification of income from that parent.

If the student's parents are divorced or separated, OHA will obtain an income declaration and certification of income from each parent.

If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, OHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. OHA will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

In determining the income eligibility of the student's parents, OHA will use the income limits for the jurisdiction in which the parents live.

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. OHA may deny assistance for an applicant because of the family's action or failure to act as described in 24 CFR 982.552 or 982.553. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for OHA, and those in which denial of assistance is optional for OHA.

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 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.

Forms of Denial [24 CFR 982.552(a)(2); HCV GB, p. 5-35]

Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list,
- Denying or withdrawing a voucher,
- Not approving a request for tenancy or refusing to enter into a HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.
-

Prohibited Reasons for Denial of Assistance [24 CFR 982.202(b), 24 CFR 5.2005(b)]

HUD rules prohibit denial of assistance to the program based on any of the following criteria:

- Age, disability, race, color, religion, sex, or national origin. (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the PHA's jurisdiction under portability (See Chapter 10, Portability.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency program
- Whether or not a qualified applicant is or has been a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking if the applicant is otherwise qualified for assistance (See Section 3-III.G.).

3-III.B. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a)]

OHA is required to establish standards that prohibit admission of an applicant to the HCV 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, OHA may choose to continue that prohibition for a longer period [24 CFR 982.553].

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 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)].

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.

Denial of Assistance

Under Federal Regulations as specified in 24 CFR Part 5 and 24 CFR Part 982 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 982.553(a)(2)(i)].
2) Convicted of drug-related criminal activity for methamphetamine production in Federally Assisted Housing

982.553 Denial of admission and termination of assistance for criminals and alcohol abusers.

(a) ***Denial of admission*** -

(1) ***Prohibiting admission of drug criminals.***

(i) The PHA *must* prohibit admission to the program of an applicant for three years from000 the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(ii) The PHA must establish standards that prohibit admission if:

(A) The PHA determines that any household member is currently engaging in illegal use of a drug;

(B) The PHA determines that it has reasonable cause to believe that a household member's illegal drug use or a pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(C) Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) ***Prohibiting admission of other criminals - (i) Mandatory prohibition.*** The PHA *must* establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

OHA Policy

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

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

There are two circumstances under which a family is ineligible to receive assistance 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; and
- A legal right to reside in the real property; and
- The effective legal authority to sell (based on state or local laws of the jurisdiction where the property is located) the real property.

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

- Any property for which the family is receiving assistance for a manufactured home under 24 CFR 982.620 or under the HCV Homeownership program;
- Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;
- Any family that is offering the property for sale; or
- Any person who is a victim of domestic violence, dating violence, sexual assault, or stalking.
  - When a family asks for an exception because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA must comply with all the confidentiality requirements under VAWA. The PHA must accept a self-certification from the family member, and the restrictions on requesting documentation under VAWA apply.
- A property is considered suitable for occupancy unless the family demonstrates that it:
- Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
- Is not sufficient for the size of the family;

  OHA Policy

  OHA defines not sufficient for the size of the family as being overcrowded based on OHA's subsidy standards in Chapter 5 of this policy.

  - 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 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 982.553, Notice PIH 2015-19]

HUD permits, but does not require, OHA to deny assistance if OHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the family would receive assistance, certain types of criminal activity. 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 assistance based on mandatory criteria specified in Federal regulations.

Previous Behavior in Assisted Housing [24 CFR 982.552(c)]

HUD authorizes OHA to deny admission based on the family's previous behavior in assisted housing:

OHA Policy

OHA **will not** deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program or the Welfare to Work voucher program. OHA will not review criminal background check information but may use sources such as but not limited to civil convictions and evictions to make denial decisions based on criteria specified below.

OHA may deny admission to an applicant family if OHA determines any one of the following:

- The family does not provide information that OHA or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to OHA.
- Any family member has been evicted from federally-assisted housing in the last five years.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family owes rent or other amounts to any PHA in connection with Section 8 or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.

- If the family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- The family has breached the terms of a repayment agreement entered into with OHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
- A family member has engaged in or threatened violent or abusive behavior toward OHA 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.

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 as defined in 24 CFR 5.902, the FBI channeler, and certified criminal search vendors to screen applicants for admission to the HCV program. The authority in 24 CFR 5. 902 and 24 CFR 5.903 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.

OHA Policy

OHA uses its own accredited police department to perform criminal background, conviction and criminal history checks and may use a third party vendor. . These checks are performed on all adult applicants using any combination of or qualified successors of The California Law Enforcement Telecommunication System (CLETS) and the National Crime Information Center (NCIC) which are criminal records databases that also provide access to the National Sex Offender Registry.

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

Before reviewing a criminal background check OHA will:

a) Provide information that upon any denial or adverse action based on criminal background information, the applicant will be provided written notice of reasons for denial and instructions for filing a complaint with the City and local legal services

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 assistance
3) If requested provide records to City to demonstrate compliance
4) Submit an annual certificate of compliance to the City in the form provided

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 has no liability or responsibility to the owner for the family's behavior or suitability for tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. OHA must inform the owner that screening and selection for tenancy is the responsibility of the owner. An owner may consider a family's history with respect to factors such as: payment of rent and utilities, caring for a unit and premises, respecting the rights of other residents to the peaceful enjoyment of their housing, activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy. Owners must comply with the Oakland Fair Chance Housing Ordinance 13581- C.M.S regarding using criminal history information in tenant selection policies, to the extent such compliance does not conflict with applicable State and Federal law.

OHA is required by HUD to provide prospective owners with the family's current and prior address (as shown in OHA records) and the name and address (if known) of the owner at the family's current and prior addresses. OHA will not provide criminal history information to prospective owners. OHA will only offer to provide the same types of information to all families and to all owners. (See Section 3-III-G. for **PHA Confidentiality Requirements** involving VAWA cases).

OHA must give applicant families a statement of policy on providing information to owners. The statement will be included in the information packet that is given to a family selected to participate in the program.

OHA will not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

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 Department Director, the Director of Human Resources and the Deputy Executive Director, or his or her, 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 Department Director, Director of Human Resources and the Deputy Executive Director for a determination.

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

- 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 or her designee, for review and final approval. The Deputy Executive Director, or his or her designee, will also sign 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 paperwork must be received and signed by the appropriate Department Director before the action or decision becomes effective.

3-III.F. CRITERIA FOR DECIDING TO DENY ADMISSION

Evidence [24 CFR 982.553(c)]

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 982.552(c)(2) and Notice PIH 2015-19]

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

OHA may consider the following circumstances prior to making its decision:

The seriousness of the case, especially with respect to how it would affect other residents' safety or peaceful enjoyment of the 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 extent of participation or culpability of individual family members, including whether the culpable family member is a minor, 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

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 982.552(c)(2)(ii)]

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

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

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

Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]

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

If the applicant family is eligible for assistance, OHA will notify the applicant when it extends the invitation to attend the voucher briefing appointment, as discussed in Chapter 5.

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 16, for informal review policies and procedures.

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)]. OHA must give the subject of record an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)].

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, based on general suitability, a criminal background check, or sex offender registration information, an applicant appears to be ineligible, OHA will notify the applicant in writing of the proposed denial and provide the applicant a copy/summary of the criminal background information causing the denial. 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's 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 to noncitizens are contained in Section 3-II.B.

3-III.H. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING

The Violence Against Women Reauthorization Act of 2013 (VAWA) and the HUD regulations at 24 CFR 5.2005(b) prohibit PHAs from denying an applicant admission to the HCV program "on the basis that the applicant is or has been a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking, if the applicant otherwise qualifies for assistance or admission."

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

Notification and Victim Documentation

VAWA 2013 expanded notification requirements to include the obligation for PHAs 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. OHA may request documentation, in writing, of an individuals VAWA status, and will provide 14 business days from receipt of written request for the survivor to submit documentation. 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, the PHA 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 the PHA will proceed with admission of the applicant family.

Nothing in this Plan shall be construed to require the PHA 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. At their discretion, the PHA may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.

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 was successfully completed or is progressing successfully. 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 the PHA 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 in a time-limited release, (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, the PHA 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, the PHA 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 of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

  (A) In General

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

  (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
  (ii) is manifested before the individual attains age 22;
  (iii) is likely to continue indefinitely;
  (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) Self-care, (II) Receptive and expressive language, (III) Learning, (IV) Mobility, (V) Self-direction, (VI) Capacity for independent living, (VII) Economic self-sufficiency; and
  (v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

  (B) Infants and Young Children

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

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

- People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.
- A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.
- For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

Individual with Handicaps [24 CFR 8.3]

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

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

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

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

(4) *Is regarded as having an impairment* means:
   (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
   (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
   (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

EXHIBIT 3-2: DEFINITION OF INSTITUTION OF HIGHER EDUCATION [20 U.S.C. 1001 and 1002]

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice [Federal Register, April 10, 2006]

Institution of Higher Education shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

Definition of ''Institution of Higher Education'' From 20 U.S.C. 1001

(a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' means an educational institution in any State that
   (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
   (2) Is legally authorized within such State to provide a program of education beyond secondary education;
   (3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
   (4) Is a public or other nonprofit institution; and
   (5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' also includes—
   (1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and
   (2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

Definition of ''Institution of Higher Education'' From 20 U.S.C. 1002

(a) Definition of institution of higher education for purposes of student assistance programs
   (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term ''institution of higher education'' for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
      (A) A proprietary institution of higher education (as defined in subsection (b) of this section);

(B) A postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

(A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—

(i) In the case of a graduate medical school located outside the United States—

(I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

(bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or

(II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

(ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

(i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and

(II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

(D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

(A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;

(B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

(C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

(A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's

management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

(B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

(1) Principal criteria. For the purpose of this section, the term ''proprietary institution of higher education'' means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;

(C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;

(D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;

(E) Has been in existence for at least 2 years; and

(F) Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

(2) Additional institutions. The term ''proprietary institution of higher education'' also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term ''postsecondary vocational institution'' means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and

(C) Has been in existence for at least 2 years.

(2) Additional institutions. The term ''postsecondary vocational institution'' also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of

section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

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Chapter 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

When a family wishes to receive Section 8 HCV assistance, the family must submit an application that provides OHA with the information needed to determine the family's eligibility. When HCV assistance becomes available, OHA must select families from the waiting list in accordance with HUD requirements and OHA policies as stated in its Administrative Plan.

OHA is required to adopt a clear approach to accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or OHA to receive preferential treatment. Funding earmarked exclusively for families with particular characteristics may also alter the order in which families are served.

HUD regulations require that OHA comply with all equal opportunity requirements and it must affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that OHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and OHA policies for taking applications, managing the waiting list and selecting families for HCV assistance.

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

> Part I: The Application Process. This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how OHA will handle the applications it receives.
>
> Part II: Managing the Waiting List. This part presents the policies that govern how OHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for public housing. It also discusses the process OHA will use to keep the waiting list current.
>
> Part III: Selection for HCV Assistance. This part describes the policies that guide OHA in selecting families for HCV assistance as such assistance becomes available. It also specifies how in-person interviews will be used to ensure that OHA has the information needed to make a final eligibility determination.

PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

This part describes the policies that guide OHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes OHA's obligation to ensure the accessibility of the application process.

4-I.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36]

Any family that wishes to receive HCV assistance must apply for admission to the program. 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. OHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the PHA's application.

OHA Policy

A two-step process will be used to take applications. Under the two-step application process, OHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and the level of assistance when the family is selected from the waiting list.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

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

Elderly and Disabled Populations [24 CFR 8 and HCV GB, pp. 4-11 – 4-13]

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

Limited English Proficiency

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

4-I.D. PLACEMENT ON THE WAITING LIST

OHA must review each completed application received and make a preliminary assessment of the family's eligibility. OHA must accept pre-applications from families for whom the list is open unless the PHA determines the family to be ineligible for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, OHA must notify the family in writing [24 CFR 982.201(f)]. Where the family is eligible, the family will be placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list. [24 CFR 982.202(c)]

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 assign 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 can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, OHA will send written notification of the ineligibility determination within 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 review and explain the process for doing so (see Chapter 16).

Eligible for Placement on the Waiting List

OHA will send written notification to the families selected for placement on the waiting list in within 120 calendar days of receiving a completed application. Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list. If selected applications are randomly assigned a lottery number, applicants will be placed on the waiting list in order of their assigned lottery number and according to OHA preference(s), if any. If no lottery number is assigned, the applicant will be placed on the waitlist in order of date/time received.

PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

OHA must have policies regarding the type of waiting list it will utilize as well as the various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for public housing, and conducting outreach to ensure a sufficient number of applicants.

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

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.***

4-II.B. ORGANIZATION OF THE WAITING LIST

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

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

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

HUD requires that PHAs maintain a single waiting list for the HCV program unless it serves more than one county or municipality. Such PHAs are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

OHA Policy

OHA will maintain a single waiting list for the MTW HCV program.

Under MTW Authority, OHA will also authorize owner administered site-based waiting lists for tenanting units at individual buildings, projects, project groups that receive Project-Based Voucher (PBV) program assistance. The site-based waiting list may be created solely from outreach efforts conducted by the authorized site property owner/manager. The property owner/manager may, but is not required to, directly notify families on the OHA tenant-based HCV waiting list of the opening of a project-based voucher site-based waiting list (See Section **17-VI.C.).** The Executive Director or designee may elect to offer applicants from the HCV program waitlist available units in other program sites (such as PBV or public housing) when other program site-based waitlists have been exhausted resulting in long-term vacancies.

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

A family's decision to apply for, receive, or refuse other housing assistance must not affect the family's placement on the HCV waiting list, or any preferences for which the family may qualify. HUD permits, but does not require, that PHAs maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs.

4-II.C. OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]

Closing the Waiting List

OHA is permitted to close the waiting list, in whole or in part, if it has an adequate pool of families to use its available HCV assistance.

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.

OHA Policy

Under MTW Authority, the OHA waiting list will always remain open for families that qualify for:

- Special Admissions under Section 4.III.B.
- A DVP/DHAP assistance preference (Limited to 50 new admissions per calendar year),
- A Family Unification Program conversion preference (Limited to 15 new admissions per calendar year unless additional funding is received from HUD),

- A Section 8 Homeownership preference (Limited to 15 new admissions per calendar year),
- A Shelter-Plus Care conversion preference (Limited to 20 new admissions per calendar year),
- A Local Housing Assistance Program (LHAP) conversion preference (number of conversions subject to funding availability).

In these cases, OHA may admit such families whether or not they are on the waiting list, and, if they are on the waiting list, without considering the family's position on the waiting list.

OHA may continue to accept MTW HCV applications from these applicants while closing the waiting list to others.

Reopening the Waiting List

If the waiting list has been closed, it may be reopened at any time. OHA will publish a notice in local newspapers of general circulation, media that target Limited English Populations (LEP), and other suitable media outlets that OHA is reopening the waiting list. 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 the Authority's website at www.oakha.org .

OHA is committed to offering housing assistance 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 availability of the various HCV and Section 8 programs , 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 will be shared with other community service providers to inform them of eligibility requirements and guidelines so that proper referrals to OHA will be made.

Marketing and informational materials will be subject to the following:

(a) compliance with Fair Housing Act requirements on wording, logo, size of type, etc. (24 CFR 109.30(a);

(b) providing an accurate description of the housing units, application process, waiting list and preference structure;

(c) using clear and easy to understand terms and will use more than strictly English-language print media;

(d) making clear who is eligible: low income individuals and families; working and non-working people; and people with both physical and mental disabilities; and

(e) specifying that reasonable accommodations will be made for persons with disabilities.

4-II.D. FAMILY OUTREACH [HCV GB, pp. 4-2 to 4-4]

OHA conducts outreach as necessary to ensure that it has a sufficient number of applicants on the waiting list.

Because HUD requires OHA to serve a specified percentage of extremely low-income families (see Chapter 4, Part III), OHA may need to conduct special outreach to ensure that an adequate number of such families apply for assistance [HCV GB, p. 4-20 to 4-21].

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
- Contacting local organizations offering assistance to survivors of VAWA violence/abuse
- 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 contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.

4-II.F. UPDATING THE WAITING LIST [24 CFR 982.204]

HUD requires OHA to establish policies to use when removing applicant names from the waiting list.

Purging the Waiting List

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to OHA's request for information or updates because of a 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 982.204(c)(2)]. See Chapter 2 for further information regarding reasonable accommodations.

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

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

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

If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 15 business days to respond from the date the letter was re-sent. If the family fails to respond within this time frame, the family will be removed from the waiting list and will be sent a Denial Letter.

If a family is removed from the waiting list for failure to respond, the Executive Director, or his designee may reinstate the family if s/he determines the lack of response was due to OHA error, undeliverable mail, due to VAWA related reasons, no response or to circumstances beyond the family's control.

OHA Policy

The waiting list will be purged whenever the "fallout rate" exceeds 35%, to ensure that applicant information is current, timely and that a reasonably efficient waiting list is available at all times.

Removal from the Waiting List

OHA will remove applicants from the waiting list if they have requested that their name be removed in writing, in person or by e-mail. In such cases no informal review 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 review regarding OHA's decision (see Chapter 16). [24 CFR 982.201(f)]

PART III: TENANT SELECTION

4-III.A. OVERVIEW

As vouchers become available, families on the waiting list must be selected for assistance in accordance with the policies described in this part.

The order in which families will receive assistance from the waiting list depends on the selection method chosen by OHA and is impacted in part by any selection preferences that the family qualifies for. The source of HCV funding 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 982.204(b) and 982.207(e)]. OHA's policies must be posted any place where OHA receives applications.

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 process to explore and test innovative methods of delivering HCV program assisted housing 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 Section 8 rules and regulations apply.

Under MTW authority, OHA is authorized to combine funding awarded annually pursuant to Section 8(o), 9(d) and 9(e) of the 1937 Act into a single authority wide funding source ("MTW Funds"). ***This authorization waives certain provisions of Section 8 and 9 of the 1937 Act and 24 CFR 982, and 990 as necessary to implement the Agency's Annual MTW Plan.*** Under MTW authority with approval from the Executive Director on a case by case basis, OHA may 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 eligible for the relevant program. This policy is authorized under Attachment C, Section D.4. of the Amended and Restated Moving to Work Agreement.

4-III.B. SELECTION AND HCV FUNDING SOURCES

Special Admissions [24 CFR 982.203]

HUD may award funding for specifically-named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in a HOPE 1 or 2 projects). In these cases, OHA may admit families that are not on the waiting list, or without considering the family's position on the waiting list. OHA must maintain records showing that such families were admitted with special program funding.

OHA Policy

Under MTW Authority and subject to approval by the Board of Commissioners, OHA may accept special admissions families in the following circumstances, and where HUD has not provided special program funding:

- A resident of a conventional housing unit, where under an "emergency transfer provision", the Authority may utilize a tenant-based Section 8 voucher for the purposes of providing alternative housing, if one is available and the resident is otherwise eligible for the HCV program.
- A family enrolled in the **2010-HUD-Ending Homelessness** study. The eligible applicant must be referred by an authorized study partner who will provide case services and monitor results. Admission to the HCV program for participation in the study group is limited to a maximum of *65* families.
- Involuntary displacement from affordable housing in Oakland due to official government action;
- Involuntary displacement due to project financial difficulties that threaten the eminent loss of affordable housing.
- A participant in an MTW authorized Transitional/Conditional Housing Program unit who has met the criteria to "graduate" may be admitted to a traditional housing program, subject to funding availability and the availability the unit that meets occupancy standards family size.

For the purpose of this section, government is defined as any federal, state, or local governmental entity or any of instrumentality or regulatory body thereof. Action is defined as any action pursuant to 1) approval by the duly-appointed or elected deliberative body and/or signed by the appropriate executive or designee, or 2) the expiration of a limited term agreement between OHA and other government entity. Financial difficulty means that the project is in the process of being declared insolvent by a court of competent jurisdiction and all effected tenants must be relocated to other housing.

In these cases, OHA may admit families that are not on the waiting list, or without considering the family's position on the waiting list. OHA must maintain records showing that such families were admitted as a Special Admission.

OHA will utilize MTW funds allocated for MTW Housing Choice Voucher program activities in providing housing assistance for these special admission families. Such families are subject to all admissions criteria applicable to the MTW Housing Choice Voucher program participation.

A project designated for Special Admissions under this policy must be specifically requested in writing by the City of Oakland or other government entity responsible for imposing the involuntary displacement action. The request must be accepted by the Director of Leased Housing. The eligible family is the family that is legally residing in the unit on the date specified in the request by City of Oakland or other government entity responsible for imposing the involuntary displacement action. OHA will also

require that the enforcement agency imposing the involuntary displacement action provide OHA with a verifiable list of legal residents that are eligible for special admission.
The eligible family that accepts the MTW Housing Choice Voucher may not utilize the voucher in the unit they currently occupy and must successfully relocate from the distressed site to be admitted to the program.

Targeted Funding [24 CFR 982.204(e)]

HUD may award OHA funding for a specified category of families on the waiting list. OHA must use this funding only to assist the families within the specified category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

OHA administers the following types of targeted funding programs:

Mainstream Program Vouchers

Family Unification Program (FUP) Vouchers

Veterans Affairs Supportive Housing Vouchers (VASH)

Non-Elderly Disabled Voucher (NED) (subject to funding availability)

OHA Policy

If there are no families on the waiting list eligible for a Targeted Funding program, OHA may to continue to accept applications (including applicant families referred by program service partner agencies), who meets the criteria for an available a targeted program voucher, while closing the waiting list to others (see 4-II.C.).

Regular HCV Funding

MTW HCV funding will be used to assist any eligible family on the HCV waiting list and any site-based waiting list authorized by OHA for a Project-Based Voucher program site.

4-III.C. SELECTION METHOD

PHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the PHA will use [24 CFR 982.202(d)]

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.***

OHA Policy

Under MTW Activity #26-01: Coordinated Housing Collaborative: Tenant-based Voucher Referrals, the Authority will receive referrals from the partnering public agencies and MOU provider partners as a dedicated pipeline to prioritize, identify, and serve assessed individuals and families experiencing homelessness or that meet special program criteria. Referrals will bypass the waiting list. To ensure a balanced approach between addressing the urgent need for housing among Oakland's homeless population and preserving access for families on the tenant-based waitlist, the Authority will implement a proportional allocation policy by determining the appropriate number of referrals based on the expected number of newly issued vouchers to families from the waitlist. The ratio of referrals to waitlist households will be determined annually by the Executive Director and stated in the MTW Annual Plan.

Local Preferences [24 CFR 982.207; HCV p. 4-16]

The PHA 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 the PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA's plan, the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

OHA Policy

OHA may use the following preferences to select families from the MTW Section 8 tenant-based voucher program waiting list:

- **Alameda County Continuum of Care**/Coordinated Entry or successor public agency partner referral
- **A Residency preference** (Applicants who live or work or have household members enrolled in schools in the City of Oakland at the time of the application interview and/or applicants that lived or worked in the City of Oakland at the time of submitting their initial application and can verify their previous residency/employment at the applicant interview, qualify for this preference).
- **A Family preference** (Applicant families with two or more persons, or a single person applicant that is 62 years of age or older, or a single person applicant with a disability, qualify for this preference).
- **A Veteran** and active members of the military preference.
- **A DVP/DHAP** assistance preference (Applicant families currently receiving Disaster Voucher Program (DVP) or Disaster Housing Assistance Program (DHAP) assistance from OHA and where DVP/DHAP program funding has expired, qualify for this preference (New admission for DVP/DHAP conversions is to limited 50 new admission families per calendar year).
- **A Family Unification Program (FUP) conversion preference.** OHA may expand the Family Unification Program (FUP) by converting certain families who were assisted by a targeted FUP voucher, to the Housing Choice Voucher (HCV) program. The families selected for this conversion must have successfully reunified, maintained housing independent of services and demonstrated stability in their

assisted tenancy for a consecutive 3-year period. Emancipated foster youths admitted to the FUP program will also be evaluated at the end of their 36-month term and upon demonstrated stability in their FUP tenancy, may also be offered the opportunity for continued assistance under the Housing Choice Voucher program. The conversion of FUP assisted families to the Housing Choice Voucher program is limited to 15 or an amount to be determined at the discretion of the Executive Director or his designee families per calendar year.

FUP program participants who agree to sign an FSS Contract of Participation (Form HUD-52650) will maintain their housing assistance for a period not exceeding the length of the FSS Contract of Participation, including extensions.

Per All provisions of HUD regulations and PIH notices will be implemented and be in effect until amended, superseded or rescinded.

- A **Shelter-Plus Care conversion preference**. OHA may expand its Shelter-Plus Care program by converting certain families who are assisted by the Shelter-Plus Care program, operated in partnership with the County of Alameda. An OHA administered Shelter-Plus Care family who has maintained housing independent of services and who has demonstrated stability in their assisted tenancy for a consecutive 3-year period may be converted to the Housing Choice Voucher (HCV) program. The conversion of Shelter-Plus Care assisted families to the Housing Choice Voucher program is limited to 20 families per calendar year.
- A **Local Housing Assistance Program (LHAP) conversion preference**. A family assisted by the OHA administered Local Housing Assistance Program (LHAP is authorized under MTW and adopted by the OHA Board of Commissioners, December 7, 2009), may be converted to the Housing Choice Voucher (HCV) program subject to funding availability and applicant eligibility for admission the HCV program.
- **A Section 8 Homeownership Program preference.** Applicant families who meets all Family Eligibility criteria for participation in the Section 8 Homeownership program (Section 15-VII.B.), and who are a participant in good standing in **any** OHA administered program, qualify for this preference. (New admission to the Section 8 Homeownership program for families who are participants from other OHA programs (see Section 15-VII.C.) is limited 15 new admission families per calendar year). The families will be selected based on the order (date and time) in which their completed application is received by OHA under all available positions are filled.
- **A Homeless preference**. Applicant families who meet the McKinney-Vento Act definition of homelessness qualify for this preference.
- **A Non-Elderly persons with Disabilities** transitioning out of institutional and other segregated settings, at serious risk of institutionalization, homeless, or at risk of becoming homeless. (2017 Mainstream Voucher Program –FR-6100-N-43 – Grant award)

OHA Policy

OHA utilizes a confidential transfer list for certain circumstances that require immediate attention. These include:

- **Families seeking an emergency transfer under VAWA** from the Public Housing, Project Based Voucher Program, or Mod-Rehab Program when OHA, or its partners are unable to locate a safe unit for the family within a reasonable amount of time and provide overall priority for families with this preference.
- **Families who requested a Reasonable Accommodation**

Order of Selection [24 CFR 960.206(e)]

OHA's system of preferences will select families by a random selection process [24 CFR 982.207(c)]. If OHA does not have enough funding to assist the family at the top of the waiting list, it is not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

MTW - Housing Choice Voucher program

OHA Policy

Families 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.

Conversions

Families will be selected based on the order (date and time) in which their completed application is received by OHA when approved for conversion to HCV from the following programs:

- Family Unification Program (FUP) conversion
- DVP/DHAP assistance
- Shelter-Plus Care conversion preference
- Local Housing Assistance Program (LHAP) conversion preference

Targeted Programs

When selecting families from the waiting list OHA is required to use the targeted program funding to assist only those families who meet specified criteria.

OHA Policy

For the **Mainstream Program vouchers**, families will be selected based on their assigned lottery number and any selection preference(s) for which they qualify.

For the **Family Unification Program (FUP) vouchers**, families will be selected first based on their assigned lottery number, any selection preference(s) for which they qualify, then in the order (date and time) in which their completed application is received by OHA.

For **Veterans Affairs Supportive Housing (VASH) vouchers,** families will be selected in the order (date and time) in which their completed application is received by OHA.

For **Non Elderly Disabled (NED) vouchers**, families will be selected based on their assigned lottery number and any selection preference(s) for which they qualify, then in the order (date and time) in which their completed application is received by OHA (Issuance of NED vouchers is subject to the award of funding from HUD).

When selecting families from the waiting list OHA is required to assist only those families who meet the specified criteria, and OHA is not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

Income Targeting Requirement [24 CFR 982.201(b)(2)]

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during OHA's fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30% of the area median income, whichever number is higher. To ensure this requirement is met, OHA may skip non-ELI families on the waiting list in order to select an ELI family.

Low income families admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b)(2)(v)].

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

OHA Policy

Under MTW Authority, OHA is authorized to determine income qualifications for participation in the rental assistance program that differ from the currently mandated program requirements in the 1937 Act and it implementing regulation, as long as the requirements that: i) at least 75 percent of those assisted under the demonstration 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 demonstration 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. if the MTW Agreement 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.***

4-III.D. NOTIFICATION OF SELECTION

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

OHA Policy

OHA will notify the family by first class mail, and via email, if provided, 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 sent a Denial Letter to the last known address and any alternate mailing address, and email if available, known to OHA. After the response period has expired, the applicant family will be removed from the waiting list without further notice.

4-III.E. THE APPLICATION INTERVIEW

HUD recommends that OHA obtain the information and documentation needed to make an eligibility determination through a private interview [HCV GB, pg. 4-16]. Being invited to attend an interview does not constitute admission to the program.

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the PHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the PHA [Notice PIH 2012-10].

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability.

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 their updated preference ranking and lottery number.

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

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer

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

OHA will make accommodations upon request for VAWA-related reasons.

An advocate, interpreter, or other assistant may assist the family with the application and the interview process. Interviews will be conducted in English. For limited English proficient (LEP) applicants, OHA will provide translation services in accordance with OHA's LAP. 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 include a Statement of a Denial indicating 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.

4-III.F. COMPLETING THE APPLICATION PROCESS

OHA must verify all information provided by the family (see Chapter 7). Based on verified information related to the eligibility requirements. OHA must make a final determination of eligibility (see Chapter 3) and must confirm that the family qualified for any special admission, targeted admission, or selection preference that affected the order in which the family was selected from the waiting list.

If OHA determines that the family is eligible to receive assistance, OHA will invite the family to attend a briefing in accordance with the policies in Chapter 5.

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 (see Chapter 16).

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 review (see Chapter 16).

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-5382) in accordance with the Violence against Women Act of 2013, and as outlined in 16-VII.C. The notice and self-

certification form must accompany the written notification of eligibility determination. This notice 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

BRIEFINGS AND VOUCHER ISSUANCE

INTRODUCTION

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, OHA must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing written documentation of information the family needs to know. Once the family is fully informed of the program's requirements, OHA issues the family a voucher. The voucher includes the unit size the family qualifies for based on OHA's subsidy standards, as well as the dates of issuance and expiration of the voucher. The voucher is the document that permits the family to begin its search for a unit, and limits the amount of time the family has to successfully locate an acceptable unit.

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

> Part I: Briefings and Family Obligations. This part details the program's requirements for briefing families orally, and for providing written materials describing the program and its requirements. It includes a particular focus on the family's obligations under the program.
>
> Part II: Subsidy Standards and Voucher Issuance. This part discusses OHA's standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

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 requirement 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 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982.503 and 982.518, as necessary to implement the Agency's Annual MTW Plan.*

PART I: BRIEFINGS AND FAMILY OBLIGATIONS

5-I.A. OVERVIEW

HUD regulations require PHAs to conduct mandatory briefings for applicant families. The briefing provides a broad description of owner and family responsibilities, explains OHA's procedures, and includes instructions on how to lease a unit. This part describes how oral briefings will be conducted, specifies what written information will be provided to families, and lists the family's obligations under the program.

5-I.B. BRIEFING

OHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed individually or in groups. At the briefing, OHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

OHA Briefings will be conducted in group meetings. These meetings may be held virtually or in-person.

All adults 18 years or older are required to attend the briefing. If the head of household is unable to attend, OHA may approve another adult family member to attend the briefing.

Families that attend group briefings and still need individual assistance will be referred to the appropriate HA staff person.

Briefings will be conducted in English. For limited English proficient (LEP) applicants, OHA will provide translation services in accordance with OHA's LAP (See Chapter 2).

Notification and Attendance

Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing, via mail, and will be sent via email, if and email address is provided. The notice will identify who is required to attend the briefing, as well as the date and time of the scheduled briefing.

If the notice is returned by the post office with no forwarding address, a notice of denial (see Chapter 3) will be sent to the family's address of record, as well as to any alternate address provided on the initial application.

Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. OHA will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without OHA approval, will be denied assistance (see Chapter 3).

Oral Briefing [24 CFR 982.301(a)]

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside OHA's jurisdiction;
- For families eligible under portability, an explanation of portability. OHA cannot discourage eligible families from moving under portability;
- Explanation of the benefits of living in low-poverty census tracts ;
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.
- Explanation of how portability works and how it can affect the family's assistance in various ways. This discussion should include that the family will be subject to the receiving PHA's policies including subsidy standards that may differ which could mean a potential decrease in the family's voucher size. The receiving PHA may have different screening criteria and/or a different payment standard which may affect eligibility or the ability to afford a unit in the receiving PHA's jurisdiction.
- OHA will review the availability of this demonstration with all FUP youth during the family briefing.
- Explanation of the VAWA documents included in the packet, and explain VAWA documents are provided to all families at admission and termination from the program.

Briefing Packet [24 CFR 982.301(b)]

Documents and information provided in the briefing packet must include the following:

- The term of the voucher, and OHA's policies on any extensions or suspensions of the term. If OHA allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how OHA determines the payment standard for a family, how OHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how OHA determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit. For a family that qualifies to lease a unit outside OHA's jurisdiction under portability procedures, the information must include an explanation of how portability works.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy**,** and a description of the

procedure for requesting approval for a tenancy.

- A statement of OHA's policy on providing information about families to prospective owners.
- OHA's subsidy standards including when and how exceptions are made.
- The HUD brochure on how to select a unit.
- The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home.*
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
- A list of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to OHA.
- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which OHA may terminate assistance for a participant family because of family action or failure to act.
- OHA informal hearing procedures including when OHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.
- An explanation of how portability works, including a list of portability contact persons for neighboring PHAs including names, addresses, and telephone numbers.
- A written statement that the family has the right to select any eligible unit available for lease, and is not obligated to choose an OHA-owned unit if any OHA-owned units are available for lease.
- Information on how to fill out and file a housing discrimination complaint form.
- Information about the protections afforded by the Violence against Women Act of 2013 (VAWA) to victims of domestic violence, dating violence, sexual assault and stalking (see section 16-IX.C).
- "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.
- "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19
- Explanation of the benefits of living in low-poverty census tracts
- Explanation of how portability works and how it can affect the family's assistance in various ways. This discussion should include that the family will be subject to the receiving PHA's policies including subsidy standards that may differ which could mean a

potential decrease in the family's voucher size. The receiving PHA may have different screening criteria and/or a different payment standard which may affect eligibility or the ability to afford a unit in the receiving PHA's jurisdiction

Neighborhood Orientation Workshop (MTW)

The Neighborhood Orientation Workshop is an MTW initiative which is intended to provide new HCV participants with access to information needed to become successful tenants and responsible members of their community. OHA will utilize staff and/or a third party contractor to conduct these workshops. The third party contractor will be selected based on their knowledge of the local market area and their expertise in marketing, outreach, communication, popular education, and other successful strategies for working with low-income households and individuals. Upon completion, attendees will receive a certificate of completion.

OHA Policy

The Head of Household must attend a Neighborhood Orientation Workshop **after** successfully leasing a unit and initial admission to the HCV program. All other responsible adult family members in the applicant family household will be encouraged, but are not be required to attend a NOW workshop session. Exceptions to this policy will be considered on a case-by-case basis subject to the approval by the Director of Leased Housing and in circumstances involving a reasonable accommodation for a person with a disability, upon approval by the Reasonable Accommodation Compliance Committee.

5-I.C. FAMILY OBLIGATIONS [24 CFR 982.551, 24 CFR 982.552]

Obligations of the family are described in the housing choice voucher (HCV) regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. OHA must inform families of these obligations during the oral briefing, and the same information must be included in the briefing packet. When the family's unit is approved and the HAP contract is executed, the family must meet those obligations in order to continue participating in the program. Violation of any family obligation may result in termination of assistance, as described in Chapter 12.

Time Frames for Reporting Changes Required By Family Obligations

Unless otherwise noted below, when family obligations require the family to respond to a request or notify OHA of a change, notifying OHA of the request or change within 10 business days is considered prompt notice.

When a family is required to provide notice to OHA, the notice must be in writing.

Family Obligations [24 CFR 982.551]

Following is a listing of a participant family's obligations under the HCV program:

- The family must supply any information that OHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by OHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.
- The family must allow OHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.

- The family must not commit any serious or repeated violation of the lease.

  OHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

  Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incident of, or criminal activity related to, domestic violence, dating violence, sexual assault or stalking will not be construed as a serious or repeated lease violation by the victim [24 CFR 5.2005(c)(1)]

  OHA POLICY

  Families must remain current on their calculated rent portion.

- The family must notify OHA and the owner before moving out of the unit or terminating the lease.

  The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to OHA at the same time the owner is notified.

  If the family or a member of the family, is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move, OHA may not terminate assistance. OHA may not terminate assistance if the family, with or without prior notification to OHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. (24 CFR § 982.354(b)(4)

  OHA Policy

  Families may not continue to receive assistance if they move from the unit without being issued a current transfer voucher. Families will not be issued a transfer voucher if they are delinquent on rent payment, regardless of written notice of agreement between the family and the owner.

- The family must promptly give OHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- The composition of the assisted family residing in the unit must be approved by OHA. The

family must promptly notify OHA in writing of the birth, adoption, or court-awarded custody of a child. The family must also promptly notify OHA in writing of the marriage of a household member. The family must request OHA approval to add any other family member as an occupant of the unit.

- The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. OHA will determine eligibility of the new member, including members added through marriage, in accordance with the policies in Chapter 3.
- The family must promptly notify OHA in writing if any family member no longer lives in the unit.
- If OHA has given approval, a foster child or a live-in aide may reside in the unit. OHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when OHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).

- The family must not sublease the unit, assign the lease, or transfer the 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.

- The family must supply any information requested by OHA to verify that the family is living in the unit or information related to family absence from the unit.

- The family must promptly notify OHA when the family is absent from the unit.

  Notice is required under this provision only 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. Written notice must be provided to OHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide, under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and OHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and OHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless OHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5-II.A. OVERVIEW

OHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions. This part presents the policies that will be used to determine the family unit size (also known as the voucher size) a particular family should receive, and the policies that govern making exceptions to those standards. OHA also must establish policies related to the issuance of the voucher, to the voucher term, and to any extensions or suspensions of that term.

5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR 982.402]

For each family, OHA determines the appropriate number of bedrooms under OHA subsidy standards and enters the family unit size on the voucher that is issued to the family. The family unit size does not dictate the size of unit the family must actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

The following requirements apply when OHA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family member who is temporarily away from the home to attend school is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a family that has an additional family member.
- Any live-in aide (approved by OHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size.
- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be a one-bedroom unit.
- 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.

  Live-in aides will be allocated a separate bedroom.

  Single person families will be allocated one bedroom.

- OHA will reference the following charts in determining the appropriate voucher size for a family:

A family with a Head of Household and **no** spouse/significant other would be allocated a subsidy size in the following manner:

Family Size	Voucher Size
1	1 Bedroom
2	2 Bedrooms
3	2 Bedrooms
4	3 Bedrooms
5	3 Bedrooms
6	4 Bedrooms
7	4 Bedrooms
8	5 Bedrooms

A family with a Head of Household and **a** spouse/significant other would be allocated a subsidy size in the following manner:

Family Size	Voucher Size
2	1 Bedroom
3	2 Bedrooms
4	2 Bedrooms
5	3 Bedrooms
6	3 Bedrooms
7	4 Bedrooms
8	4 Bedrooms
9	5 Bedrooms

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

In determining family unit size for a particular family, OHA may grant an exception to its established subsidy standards if OHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances [24 CFR 982.402(b)(8)]. Reasons may include, but are not limited to:

- A need for an additional bedroom for medical equipment
- A need for a separate bedroom for reasons related to a family member's disability, medical or health condition
- Delays related to domestic violence, dating violence, sexual assault, stalking, or VAWA incidents
- Enhanced Vouchers due to housing conversion actions including preservation prepayments and Section 8 project-based contract opt-outs (PIH-2016-02)

For a single person who is not elderly, disabled, or a remaining family member, an exception cannot override the regulatory limit of a zero or one bedroom [24 CFR 982.402(b)(8)].

The family must request any exception to the subsidy standards in writing. The request must explain the need or justification for a larger family unit size, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source, unless the disability and the disability–related request for accommodation is readily apparent or otherwise known.

OHA will notify the family of its determination within 15 business days of receiving the family's request. If a participant family's request is denied, the notice will inform the family of their right to request an informal hearing.

5-II.D. VOUCHER ISSUANCE [24 CFR 982.302, OHA MTW Policy]

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, OHA issues a Housing Choice Voucher, form HUD-52646. For voucher issuance associated with moves, please refer to Chapter 10: MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY.

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies, and includes both the date of voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence that OHA has determined the family to be eligible for the program, and that OHA expects to have money available to subsidize the family if the family finds an approvable unit. However, OHA does not have any liability to any party by the issuance of the voucher, and the voucher does not give the family any right to participate in OHA's housing choice voucher program [Voucher, form HUD-52646]

A voucher can be issued to an applicant family only after OHA has determined that the family is eligible for the program based on information received within the 120 days prior to issuance [24 CFR 982.201(e), OHA MTW policy] and after the family has attended an oral briefing [HCV 8-1]. Vouchers will be issued to eligible applicants immediately following the mandatory briefing.

OHA will have sufficient funds to house an applicant before issuing a voucher. If funds are insufficient to house the family at the top of the waiting list, OHA will wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10].

Prior to issuing any vouchers, OHA will determine whether it has sufficient funding in accordance with the policies in Part VIII of Chapter 16.

If OHA determines that there is insufficient funding after a voucher has been issued, OHA may rescind the voucher and place the affected family back on the waiting list.

5-II.E. VOUCHER TERM, EXTENSIONS, AND SUSPENSIONS

Voucher Term [24 CFR 982.303]

The initial voucher term will be at least 60 calendar days and may not exceed 180 calendar days. The initial term must be stated on the voucher [24 CFR 982.303(a)].

The family must submit a Request for Tenancy Approval and proposed lease within the 180-day period unless OHA grants an extension.

Initial Term – Incoming Portables

OHA will issue all incoming portables a voucher with an expiration date that expires 30 days after the initial voucher term provided by the initial housing authority. OHA will not grant any extensions to this term. The incoming client will have to seek an extension from the initial housing authority. However, as a reasonable accommodation for disabled clients, OHA will coordinate this contact with the initial authority if the client so requests.

Extensions of Voucher Term [24 CFR 982.303(b)]

OHA may approve one or more extensions to the initial voucher term for a maximum of 90 calendar days, starting on the day after the voucher expires. There can be no break in the term of the voucher. Extensions will be granted for a maximum of 90 days. For any extension requests that exceed 180 calendar days, the request must be approved by the Director of Leased Housing or their designee.

1. All requests for extensions to the initial voucher term must be made in writing and submitted to OHA prior to the expiration date of the voucher.

2. Any request for extensions to the initial voucher term must include the reason(s) the extension is necessary. OHA can require the family to provide documentation to support the request.

3. OHA will provide written notice of approval or denial of an extension request within 10 business days of the date the request is received. OHA's decision to deny a request for an extension of the voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

4. OHA may approve additional search time beyond the initial term due to reasons beyond the family's control, as determined by OHA. The following is a list of extenuating circumstances that OHA may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted.
    - Serious accident, illness or death in the family
    - Legal proceedings
    - Obstacles due to employment
    - Whether family size or other special requirements make funding a unit difficult.

5. If an applicant or participant needs and requests an extension of the voucher term as a reasonable accommodation to make the program accessible to and usable by a family member with disabilities, OHA will extend the voucher term up to the term that is reasonably required, not to exceed 90 days.

Exception to this policy may be approved on a case by case basis by the Director of Leased Housing.

Suspensions of Voucher Term [24 CFR 982.303(c)]

Upon submittal of a completed *Request for Tenancy Approval* (RTA) form, OHA will suspend the term of the voucher. "Suspension" means stopping the clock on a family's voucher term from the time a family submits the RTA until the time OHA approves or denies the request [24 CFR 982.4]. OHA will suspend the term until the date the Authority either approves or denies the RTA. This policy allows families the full term to find a unit, and does not penalize the family for the number of days during which OHA is considering their request. A family may not submit a second RTA before OHA finalizes action on the first RTA. The number of days that a voucher is suspended is added on to the consecutive days, starting on the day after the voucher expires. There can be no break in the term of the voucher, i.e. the family may not request for suspended days to be restored at a later time. OHA's determination not to suspend a voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

Expiration of Voucher Term

Within 10 business days after the expiration of the voucher term or any extension, OHA will notify the family in writing that the voucher term has expired and that the family must reapply in order to be placed on the waiting list.

Applicant Family

- Once an applicant family's voucher term expires (including any suspensions and extensions), the family is no longer eligible to search for housing under the program.
- If an applicant family's voucher term expires before the family has submitted an approved Request for Tenancy Approval (RTA), OHA will require the family to reapply for assistance when the wait list is next opened.

Assisted Family Residing in the Unit

- Once an assisted family's voucher term expires (including any suspensions and extensions), the family is no longer eligible to search for housing under the program.
- If a family does not move within the term of the voucher and any extensions, the family may remain in its current unit with continued assistance.
- The assisted family is not authorized to move from the unit if the voucher term has expired (including any suspensions and extensions). The lone exception is in a case qualifying under the Violence Against Women's Act (VAWA).

Assisted Family that Vacated the Unit

- If the assisted family vacates its current voucher assisted unit without requesting a transfer voucher, OHA will propose to terminate the family from the Section 8 Housing Choice Voucher Program.
- The family is entitled to a meet and discuss and/or an informal hearing before OHA may terminate their continued assistance.
- The decision to deny an extension of the voucher is not subject to informal hearing (Chapter 16-14).

Chapter 6

INCOME AND SUBSIDY DETERMINATIONS

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

INTRODUCTION

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

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

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

Part III: Calculating Family Share and PHA Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining PHA subsidy and required family payment.

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 also 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 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982503 and 982.518, 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 versions 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 income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income 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.

OHA Policy

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 982.516 and 982 Subpart E, as necessary to implement the Agency's Annual MTW Plan.***

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**, and working families with the option to have income calculated biennially.**

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

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

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(c)(2)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Earned income is excluded [24 CFR 5.609(b)(3)]. All other sources of unearned income, except those specifically excluded by the regulations, are included [24 CFR 5.609(a)].
Full-time students 18 years of age or older (not head, spouse, or cohead)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(1)]. 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.

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 60 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 60 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below. Reference chapters 3 and 11 for additional information on absentee family members.

Absent Students

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to OHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

Absences Due to Placement in Foster Care

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

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 be counted as a family member.

Absent Head, Spouse or Cohead

OHA Policy

An employed head, spouse, or cohead absent from the unit more than 60 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 Permanently Confined for Medical Reasons

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

OHA Policy

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.

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

Joint Custody of Children

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) claims 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 of head of household and spouse/co-head's death or abandonment of a unit, OHA will take the following actions:

1. **Caretaker not to apply for eligibility**
    a. 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.
    b. 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.
2. **Caretaker to apply for eligibility while living in unit**
    a. Only a head of household will be added to the voucher and 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.
    b. Within 30 days require the designated caretaker or visitor to meet OHA eligibility requirements and provide a letter from the owner authorizing them to reside in the unit as a visitor.
    c. If a caretaker has assumed **responsibility** for a child without formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 30 days. During the initial 30 day period, the caretaker must initiate formal custody or legal guardianship; and acquire owner approval. If after 30 days has elapsed and the caretaker has not initiated the process to obtain formal custody or legal guardianship, the HAP contract will be cancelled and the family will be terminated.
    d. When that custody or guardianship legally has been awarded to a caretaker, as head of household (subject to the caretaker meeting all OHA eligibility admissions criteria for Section 8 program participation). The exception is if a

property owner refused to execute a lease with the awarded caretaker. In this case, the caretaker will request a transfer voucher.

e. The head of household will no longer qualify for program participation if the minor is no longer a member of the household.

f. 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 will conduct an interim re-examination to establish a HAP payment for the owner.

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. Policies related to verifying income are found in Chapter 7.

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 will be projected by applying each income amount to the appropriate part of the 12-month period.

Example: An employer reports that a full-time employee who has been receiving $8/hour will begin to receive $8.25/hour in the eighth week after the effective date of the new admission or interim reexamination. In such a case 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 11.

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

At annual reexamination, PHAs must first determine the family's income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with PHA policies in Chapter 11 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 rental assistance. Income from assets is always anticipated, irrespective of the income examination type. Policies related to conducting annual reexaminations are located in Chapter 11.

6-I.D. EARNED INCOME

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

The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income. [24 CFR 5.609(b)(1)]

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. The file will be documented appropriately.

Military Pay

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

Earnings of a Minor [24 CFR 5.609(b)(3)]

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

Earned Income of Full-Time Students [24 CFR 5.609(b)(14)]

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

A family member other than the head of household or spouse/cohead is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.603(b)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16; Notice PIH 2023-27]

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

Calculation of the Disallowance

Calculation of the earned income disallowance for an eligible member of a qualified family

begins with a comparison of the member's current income with 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.

While qualification for the disallowance is the same for all families, calculation of the disallowance will differ depending on when the family member qualified for the EID. Participants qualifying prior to May 9, 2016, will have the disallowance calculated under the "Original Calculation Method" described below which requires a maximum lifetime disallowance period of up to 48 consecutive months. Participants qualifying on or after May 9, 2016, will be subject to the "Revised Calculation Method." Which shortens the lifetime disallowance period to 24 consecutive months.

Under both the original and new methods, the EID eligibility criteria, the benefit amount, the single lifetime eligibility requirement and the ability of the applicable family member to stop and restart employment during the eligibility period are the same.

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 months later. During the 24-month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and HCV assistance, or have breaks in assistance.

The EID will sunset on January 1, 2026. In no circumstances will a family member's exclusion period continue past January 1, 2026.

6-I.F. BUSINESS AND SELF-EMPLOYMENT INCOME [24 CFR 5.609(b)(28); Notice PIH 2023-27]

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

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

OHA Policy

To determine business expenses that may be deducted from gross income, the PHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described herein.

Independent Contractors

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (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 PHAs to deduct from gross income expenses for business expansion.

OHA Policy

Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

Capital Indebtedness

HUD regulations do not permit OHA to deduct from gross income the amortization of capital indebtedness.

OHA Policy

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

Negative Business Income

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

Withdrawal of Cash or Assets from a Business

HUD regulations require OHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

OHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of a tenant family provided an up-front loan of $2,000 to help a business get started, OHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

Co-owned Businesses

OHA Policy

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

Assets Owned by a Business Entity

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

6-I.G. STUDENT FINANCIAL ASSISTANCE [FR Notice 2/14/23 and Notice PIH 2023-27]

Introduction

Section 479B of the HEA requires that all assistance under Title IV of the HEA and Bureau of Indian Affairs student financial assistance, even assistance provided to students in excess of tuition and required fees or charges, be excluded from HUD income calculations.

For Section 8 programs only, however, for over 10 years through FY 2022, HUD appropriations have included a provision that for certain students receiving Section 8 assistance, any amounts received in excess of tuition and any other required fees and charges are considered income (with the exception of students who lived with their parents or who were over the age of 23 with a dependent child).

While the language in various consolidated appropriations acts is limited to federal fiscal year covered by the act, this does not rule out the possibility that similar language will be included in future years' appropriations bills.

- For any funds from a year where HUD's appropriations acts include this limitation, it will apply with respect to Section 8 participants. The PHA will follow the pre-HOTMA Section 8 student financial assistance limitation described below.
- During years in which an appropriations act does not contain this Section 8 student financial assistance limitation (or any other such limitation), then the determination of student financial assistance as included/excluded income for all Section 8 students defaults to the methodology described for the public housing program and listed below.

Pre-HOTMA Section 8 Student Financial Assistance Limitation [FR 4/10/06; Notice PIH 2015-21]

In 2005, Congress passed a law (for Section 8 programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded. For some students, the full exclusion still applies.

The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age **OR** they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition and any other required fees and charges received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

To determine annual income in accordance with the above requirements, the PHA will use the definitions of *dependent child, institution of higher education,* and *parents* in Chapter 3, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition and fees* are defined in the same manner in which the Department of Education defines *tuition and fees* [Notice PIH 2015-21].

- This is the amount of tuition and required fees covering a full academic year most frequently charged to students.
- The amount represents what a typical student would be charged and may not be the same for all students at an institution.
- If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an academic year is used to estimate average tuition.
- Required fees include all fixed-sum charges that are required of a large proportion of all students. Examples include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).
- Expenses related to attending an institution of higher education must **not** be included as tuition. Examples include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed-sum charges.

Any student financial assistance not subject to inclusion under the regulations is fully excluded from annual income, whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
- Students who are over 23 **AND** have at least one dependent child, as defined in section 3-II.E
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

HOTMA Student Financial Assistance Requirements [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.

Types of Assistance

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

Examples of assistance under title IV of the HEA include:

- Federal Pell Grants;
- Teach Grants;
- Federal Work Study Programs;
- Federal Perkins Loans;
- Income earned in employment and training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA); or

- Bureau of Indian Affairs/Education student assistance programs
  - The Higher Education Tribal Grant
  - The Tribally Controlled Colleges or Universities Grant Program

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

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

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

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

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

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

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

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

Student financial assistance, does not include:

- Financial support provided to the student in the form of a fee for services performed; (e.g., a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA);
- Gifts, including gifts from family or friends; or

- Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

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

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

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

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

OHA Policy

OHA will include in annual income the full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

Payments in lieu of earnings, such as unemployment and disability compensation, and severance pay are also counted as income if they are received in the form of periodic payments.

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

OHA will include in annual income lump sums received as a result of delays in processing periodic payments (other than those specifically excluded by the regulation), such as unemployment or welfare assistance.

When a delayed-start payment is received that is to be included and the family reports this during the period in which OHA is processing an annual reexamination, OHA will adjust the family's rent share 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 11. If not, OHA will consider the amount when processing the family's next annual recertification.

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

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 2018-24]

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 will 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. The PHA may accept a self-certification from the family stating that the income will not be repeated in the coming year. See Chapter 7 for PHA policies related to verification of nonrecurring income.

Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income as nonrecurring income, even if the source, date, or amount of the income varies.

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

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

- Nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities;
- Payments for eviction prevention;
- Security deposits to secure housing;
- Payments for participation in research studies (depending on the duration); and
- General one-time payments received by or on behalf of the family.

Nonrecurring income that is excluded under the regulations includes:

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

6-I.J. WELFARE ASSISTANCE

Overview

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

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

OHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

Covered Families

The families covered by 24 CFR 5.615 are those "who receive welfare assistance or other public assistance benefits ('welfare benefits') from a State or other public agency ('welfare agency') under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance" [24 CFR 5.615(b)]

Imputed Income

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, OHA must include in annual income "imputed" welfare income. OHA must request that the welfare agency inform OHA when the benefits 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)].

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.

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.

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 written verification of the developmental disability from a qualified third party.

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 the PHA or owner chooses not to conduct the examination.

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

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

- Payments received for the care of foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(b)(4)].
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR 5.609(b)(5)]. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income [Notice PIH 2023-27].
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6)].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7)].
- Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10)].
- Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10)].
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17)]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].

- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20)]. The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [Notice PIH 2023-27].
- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members in excess of the first $2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income in HUD programs that adopt the definitions of *annual income* in 24 CFR 5.609, the Census Long Form, and the IRS Form 1040, including the programs affected by Notice PIH 2023-27.
- Replacement housing "gap" payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments [24 CFR 5.609(b)(23)].
- Income earned on amounts placed in a family's Family Self-Sufficiency account [24 CFR 5.609(b)(27)].
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program [24 CFR 5.609(i)(12)(ii)].
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(b)(12)(i)].
- Amounts received under a resident service stipend not to exceed $200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development [24 CFR 5.600(b)(12)(iii)].
- Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv)].

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(b)(20)].
- Amounts that HUD is required by federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(b) apply. HUD will publish a notice in the *Federal Register* to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

1. 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

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

OHA Policy

OHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than $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. The PHA must exclude the entire value of the individual's ABLE account from the household's assets. Distributions from the ABLE account are also not considered income. However, all wage income received, regardless of which account the money is paid to, is included as income.

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

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

- When the combined value of net family assets is greater than $50,000, as adjusted by inflation, financial investments such as stocks and bonds are considered part of net family assets. In this case, the value of the family's 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 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. Necessary items of person property include a car used for commuting or medical devices.

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

The combined value of all **non-necessary** items of personal property is only included in annual income when the combined total value exceeds $50,000 (adjusted annually by HUD). 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. The PHA must consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by 10 percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter 11. 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.

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

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

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

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

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

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

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

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

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

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

The value of revocable trusts that are not under the control of the family are excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not "own" the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to

be considered excluded from net family assets, no family or household member may be the account's trustee. If this is the case, then distributions from the trust are treated as follows:

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

Revocable trusts under the control of the family or household (e.g., the grantor is a member of the assisted family or household) are considered assets and must be included in net family assets.

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

Life Insurance [FR Notice 2/14/23 and Notice PIH 2023-27]

Net family assets do not include the value of term life insurance, which has no cash value to the individual before death.

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

Tax Refunds [24 CFR 5.603(b)(3)(xi) and Notice PIH 2023-27]

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family.

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

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

Asset Exclusions [24 CFR 5.603(b)]

The following are excluded from the calculations of net family assets:

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

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.

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

Imputed Income from Assets

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

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

PART III: ADJUSTED INCOME

6-III.A. INTRODUCTION

Overview

HUD regulations require OHA to deduct from annual income any of five mandatory deductions for which a family qualifies and allow 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 health and medical care expenses of any elderly family or disabled family;

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

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 nonschool periods and cyclical medical expenses), OHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, OHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. OHA may require the family to provide documentation of payments made in the preceding year.

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

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

6-III.C. ELDERLY OR DISABLED FAMILY DEDUCTION

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

OHA Policy

Households that participate in the MTW Rent Reform Pilot will not be using the standard deductions.

6-III.D. HEALTH AND MEDICAL CARE EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i) and 5.603(b)]

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

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

Definition of *Medical Expenses*

HUD regulations define *health and medical care expenses* at 24 CFR 5.603(b) to mean "any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed." Medical insurance premiums continue to be eligible health and medical care expenses. Health and medical care expenses may be deducted from annual income only if they are eligible and not otherwise reimbursed and may only be deducted for elderly or disabled families.

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

OHA Policy

Expenses for Companion Animals

Requests for Companion animals are considered a reasonable accommodation and expenses related to these animals will qualify pending approval of the reasonable accommodation.

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 cohead is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either a health and medical care or disability assistance expenses, 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.

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.

OHA Policy

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, 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 not reimbursed by an outside source.

Necessary and Reasonable Expenses

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

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

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

When expenses anticipated by a family could be defined as either 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."

Clarifying the Meaning of *Child* for This Deduction

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family's household [VG, p. 26]. However, child care expenses for foster children that are living in the assisted family's household, are included when determining the family's child care expenses [HCV GB, p. 5-29].

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

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 may 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 their education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by "the amount of employment income that is included in annual income" [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person who receives the earned income disallowance (EID) or a full-time student whose earned income above $480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person's earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes $15,000 but because of the EID only $5,000 is included in annual income, child care expenses are limited to $5,000.

OHA must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

OHA Policy

When the child care expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, OHA generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

Eligible Child Care Expenses

The type of care to be provided is determined by the tenant family. OHA may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

Allowable Child Care Activities

OHA Policy

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.

The costs of general housekeeping and personal services are not eligible. Likewise, child care expenses paid to a family member who lives in the family's unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible.

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, OHA will prorate the costs and allow only that portion of the expenses that is attributable to

child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Necessary and Reasonable Costs

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

OHA Policy

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

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

6-III.G. HARDSHIP EXEMPTIONS

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, the PHA will need to process another transaction one year later to move the family along to the next phase. The transaction can be either an interim reexamination if triggered, or a non-interim reexamination transaction.

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

PHAs must track the 24-month phase-period for each eligible family, even if a family's expenses go below the appropriate phase-in percentage, during the first or second 12-month phase-in period. The phase-in must continue for families who move to another public housing unit at the same PHA. When the family is treated as a new admission under a different property/program (e.g., the family moves from public housing to the HCV program), unless the PHA has a written policy to continue the phased-in relief upon admission, the family's expense deduction will be calculated using the 10-percent threshold unless request for general relief is approved by the PHA. When a family moves with continued assistance or ports to a new PHA, the family must continue to receive the phased-in relief. The family must receive the remaining calendar months of the percentage phase-in. The PHA must use the existing phase-in documentation to determine the remaining calendar months and the percentage phase-in.

OHA Policy

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

General Relief

The second category is for families that can demonstrate:

- Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- The family's financial hardship is a result of a change in circumstances (as defined in PHA

policy) that would not otherwise trigger an interim reexamination.

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

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) and 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 PHA policies.

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

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

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

Other circumstances as determined by 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. OHAs 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's notice will also state that if the family does not agree with OHA's determination, the family may request an informal 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. OHA is not limited to a maximum number of 90-day extensions. OHA 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 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.

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

OHA has opted not to use permissive deductions.

PART IV: CALCULATING FAMILY SHARE AND PHASUBSIDY

6-IV.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS

TTP Formula [24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between $0 and $50 that is established by OHA

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

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

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.

Welfare Rent [24 CFR 5.628]

OHA Policy

Welfare rent does not apply in OHA's jurisdiction.

Minimum Rent [24 CFR 5.630]

OHA Policy

The minimum rent for OHA's clients is $50, except for households participating in the MTW Rent Reform Pilot, in which case the minimum rent is $25.

Family Share [24 CFR 982.305(a)(5) as amended by MTW]

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds OHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy OHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 120 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

OHA Subsidy [24 CFR 982.505(b)]

OHA will pay a monthly housing assistance payment (HAP) for a family that is equal to the lower of (1) the applicable payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP. (For a discussion of the application of payment standards, see section 6-III.C.)

Utility Reimbursement

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 Housing Choice Voucher program that will reduce costs and achieve greater cost effectiveness in Federal expenditures. Policies developed under MTW authority are designed to encourage low income families to lease energy efficient units and conserve and control their energy use.

OHA Policy

In accordance with MTW Activity #15-02, when OHA's subsidy for a family exceeds the rent to owner, OHA will not make a utility reimbursement to the family.

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 noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

OHA Policy

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of

the first of the month following (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

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

OHA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent or tenant-paid utilities.

(3) Family income has decreased because of changed family circumstances, including the loss of employment.

(4) A death has occurred in the family.

OHA Policy

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

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

OHA Policy

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

MTW Utility Allowance Hardships

OHA Policy

Under the MTW utility allowance activity, a family's UA is determined by the size of the dwelling unit leased or the voucher unit size for which the family qualifies using OHA subsidy standards, whichever is the lowest of the two:

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.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

Example: Impact of Minimum Rent Exemption Assume OHA has established a minimum rent of $50.	
Family Share – No Hardship	**Family Share – With Hardship**
$0 30% of monthly adjusted income	$0 30% of monthly adjusted income
$15 10% of monthly gross income	$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
$50 Minimum rent	$50 Minimum rent
Minimum rent applies. TTP = $50	Hardship exemption granted. TTP = $15

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.

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 suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family's request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay 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.

OHA Policy

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

Long-Term Hardship

If OHA determines that the financial hardship is long-term, OHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

OHA Policy

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

1. At an interim or next scheduled reexamination, the family's calculated TTP is greater than the minimum rent.
2. For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a $60/month child support payment, the hardship will continue to exist until the family receives at least $60/month in income from another source or once again begins to receive the child support.
3. For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

6-IV.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505; 982.503(b)]

Overview

OHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of OHA's payment standards. The establishment and revision of OHA's payment standard schedule are covered in Chapter 16.

Payment standard is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 CFR 982.4(b)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under OHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If OHA establishes an exception payment standard for a designated part of a zip code area or FMR area and a family's unit is located in the exception area, OHA must use the appropriate payment standard for the exception area.

OHA is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the owner lowers the rent, OHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

OHA Policy

To increase housing choices for low income families, OHA is not limited to establishing payment standards the within the HUD required basic range of between 90 percent and 110 percent of the published FMR for each that unit size. OHA is authorized to establish payment standards for the MTW Housing Choice Voucher program that reflect current local rental market conditions. Per MTW Activity 17-01, OHA may establish payment standards of up to 150% of the published FMR for each unit size based on various criteria specified to establish payment exception standard hubs or alternative payment standards through authorized payment standard waiver requests.

Changes in Payment Standards

When OHA revises its payment standards during the term of the HAP contract for a family's unit, it will apply the new payment standards in accordance with HUD regulations.

Decreases

If OHA changes its payment standard schedule, resulting in a lower payment standard amount, during the term of a HAP contract, OHA is not required to reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect [FR Notice 11/16/16].

However, if OHA does choose to reduce the payment standard for families currently under HAP contract, the initial reduction to the payment standard may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. At that point, OHA may either reduce the payment standard to the current amount in effect on OHA's payment standard schedule, or may reduce the payment standard to another amount that is higher than the normally applicable amount on the schedule. OHA may also establish different policies for designated areas within their jurisdiction (e.g., different zip code areas).

In any case, OHA must provide the family with at least 12 months' notice that the payment standard is being reduced before the effective date of the change. OHA's policy on decreases in

the payment standard during the term of the HAP contract apply to all families under HAP contract at the time of the effective date of the decrease in the payment standard within the designated area.

OHA Policy

If OHA changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, OHA will not reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect.

OHA will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

Increases

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

OHA Policy

If an interim is initiated by OHA because of an approved rent increase, the higher payment standard will be applied.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next scheduled reexamination [HCV GB].

Changes in Family Unit Size

Irrespective of any increase or decrease in the payment standard, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard for the family beginning at the family's first regular reexamination following the change in family unit size.

Reasonable Accommodation (HOTMA)

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, OHA may approve a higher payment standard for the family of more than 120 percent of the fair market rent with HUD approval.

OHA Policy

If the payment standard amount has i*ncreased* as a result of a reasonable accommodation, the increased payment standard will be applied once all requested documents are received, on the first of the following month of the approval date of the reasonable

accommodation. Delays in the interim reexamination process by the family will result in the payment standard increase being applied the first of the following month when all necessary documents have been received.

If the payment standard amount has *decreased* as a result of a reasonable accommodation that is no longer applicable, the *decreased* payment standard will be applied only after the family has received 30 days notice.

6-IV.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517]

Overview

OHA Policy
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 Housing Choice Voucher 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 lease energy efficient units and conserve and control their energy consumption.

For policies on establishing the MTW utility allowances, see Chapter 16-II.C.

Reasonable Accommodation and Individual Relief

On request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible and usable by the family member with a disability [24 CFR 982.517€]. (See Chapter 2 for policies regarding the request and approval of reasonable accommodations.)

Further, the PHA may grant requests for individual relief from charges in excess of the utility allowance on reasonable grounds, such as special factors not within control of the resident, as the PHA deems appropriate. The family must request the higher allowance and provide the PHA an explanation of the need for individual relief and an explanation about the amount of additional allowance required [see HCV GB, p. 18-8].

PHAs should develop criteria for granting individual relief, notify residents about the availability of individual relief, and notify participants about the availability of individual relief programs (sometimes referred to as "Medical Baseline discounts") offered by the local utility company.

OHA Policy
The family must request the higher allowance and provide the PHA with information about the amount of additional allowance required.

OHA will consider the following criteria as valid reasons for granting individual relief:

- The family's consumption was mistakenly portrayed as excessive due to defects in the meter or errors in the meter reading.
- The excessive consumption is caused by a characteristic of the unit or owner-supplied equipment that is beyond the family's control, such as a particularly inefficient

refrigerator or inadequate insulation. The allowance should be adjusted to reflect the higher consumption needs associated with the unit until the situation is remedied. The resident should be granted individual relief until the allowance is adjusted.

- The excessive consumption is due to special needs of the family that are beyond their control, such as the need for specialized equipment in the case of a family member who is ill, elderly, or who has a disability.

In determining the amount of the reasonable accommodation or individual relief, OHA will allow a reasonable measure of additional usage as necessary. To arrive at the amount of additional utility cost of specific equipment, the family may provide information from the manufacturer of the equipment, or the family or OHA may conduct an internet search for an estimate of usage or additional monthly cost.

Information on reasonable accommodation and individual relief for charges in excess of the utility allowance will be provided to all families at admission as part of the information on payment standards and utility allowances in the briefing packet. OHA will also provide information on utility relief programs or medical discounts (sometimes referred to as "Medical Baseline discounts") that may be available through local utility providers.
At its discretion, the PHA may reevaluate the need for the increased utility allowance at any regular reexamination.

If the excessive consumption is caused by a characteristic of the unit or OHA-supplied equipment that is beyond the family's control, such as a particularly inefficient refrigerator or inadequate insulation, the individual relief to the resident will cease when the situation is remedied.

Utility Allowance Revisions

At reexamination, OHA may use its current MTW utility allowance schedule. [24 CFR 982.517 (d) (2)]

Revised utility allowances will be applied to a family's rent and subsidy calculations at the next regular 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 next regular 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 next regular reexamination date following the adoption of the revised utility allowance schedule.

6-IV.E. PRORATED ASSISTANCE 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 assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible.

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.

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

created, authorized, or funded by Federal, State, or local government.

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

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

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

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

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

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

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

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

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

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

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

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

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

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in

paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 6-2: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

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

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

(3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all nonnecessary items of personal property if the combined total value does not exceed $50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; (iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located; (v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability; (vi) The value of any Coverdell

education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any "baby bond" account created, authorized, or funded by Federal, State, or local government. (vii) Interests in Indian trust land; (viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982; (ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982; (x) Family Self-Sufficiency Accounts; and (xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

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

EXHIBIT 6-3: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

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

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

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

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

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

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

Specified welfare benefit reduction.

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

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

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

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

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

(c) *Imputed welfare income.*

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

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

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

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

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

(d) *Review of PHA decision.*

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

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

(e) *PHA relation with welfare agency.*

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

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

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

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Chapter 7

VERIFICATION

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH 2018-18, PIH 2018-24]

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 ("VG") 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. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

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

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 982.516 and 982 Subpart E, 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 Section 8 rules and regulations apply.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION
[24 CFR 982.516 and 982.551, 24 CFR 5.230; Notice PIH 2023-27]

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 982.551].

Consent Forms
The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR 982.551]. All adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. While PHAs must use form HUD-9886, this form does not release all the information necessary to the administration of the program. The PHA must also develop its own release forms to cover all other necessary information.

Form HUD-9886 [24 CFR 5.230(b)(1), b(2), (c)(4), and (c)(5)]; Notice PIH 2023-27
All adult applicants and tenants sign OHA Authorization Release Form/Privacy Act Notice. 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 the PHA 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 this form 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.

OHA Policy

In accordance with MTW Activity #14-01, 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.

Penalties for Failing to Consent [24 CFR 5.232]
If any family member who is required to sign a consent form fails to do so, OHA will deny admission to applicants and terminate the assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with OHA procedures.
However, this does not apply if the applicant, participant, or any member of their family, revokes their consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy that revocation of consent to access financial records will result in denial or termination of assistance or admission [24 CFR 5.232(c)]. PHAs may not process interim or annual reexaminations of income without the family's executed consent forms.

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 their local HUD office.

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

OHA may, but is 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. OHA is 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, OHA must establish in policy when they will accept Safe Harbor income determinations and from which programs. OHA 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, OHA 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 OHA is 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. OHA is 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. OHA is 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 admission or recertification 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 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);
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 that 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 11. 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 OHA 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 OHA may choose to adjust sources of non-fixed income based on third-party verification. OHA has 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, OHA may

apply a COLA to each of the family's sources of fixed income. OHA 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. The PHA must demonstrate efforts to obtain third party verification prior to accepting self-certification except instances when self-certification is explicitly allowed.

In order of priority, the hierarchy is:

- Highest: Level 6: Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Highest: Level 5: Up-front Income Verification (UIV) using a non-EIV system
- High: Level 4:
- Written third-party verification from the source, also known as "family-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.

E-File or File Documentation
OHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that OHA has followed all of the verification policies set forth in this Plan. 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.
OHA restricts access to and safeguards UIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.
There may be legitimate differences between the information provided by the family and UIV-generated information. No adverse action can be taken against a family until OHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through OHA's informal review/hearing processes.

Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)

OHA must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income in accordance with 24 CFR 5.236 and Notice PIH 2023-27. The EIV system contains data showing earned income, unemployment benefits, Social Security and SSI benefits for participant families. HUD requires PHAs to use the EIV system when available. The following policies will apply when OHA has access to HUD's EIV system.

EIV Income and IVT Reports

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

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

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

PHA Policy

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

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

Income and IVT reports will be retained in participant files with the applicable annual documents or interim reexamination documents (if applicable) for the duration of the family's participation.

When the PHA determines through EIV reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

New Hires Report [Notice PIH 2023-27]

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

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

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

PHA Policy

In accordance with PHA policies in Chapter 11, the PHA does not process interim reexaminations for families who have increases in earned income. Except for instances in which the PHA uses Safe Harbor income determinations to determine a family's annual income, the PHA will only review the New Hires Report at annual reexamination.

No Income Reported by HHS or SSA Report

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

PHA Policy

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

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

When the PHA determines through this report and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity

EIV Identity Verification Report

The EIV system verifies tenant identities against 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 participant fails, a message will be displayed within the EIV system and no income information will be displayed.

OHA Policy

OHA will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis and as part of the annual reexamination process.

OHA will attempt to resolve discrepancies by obtaining appropriate documentation from the participant. When OHA determines that discrepancies exist due to OHA errors such as spelling errors or incorrect birth dates, the errors will be corrected.

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, OHA 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. OHA must notify the owner in writing of the deceased head of household.

OHA may list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

OHA Policy

OHA will list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

When the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or 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.

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, OHA is 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, the PHA will explain the reason to the family and request additional documentation from the family or will use a lower form of verification such as a written third-party verification form.

When verification of assets held by a banking or financial institution is required, 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." OHA sends an OHA-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 Information is Late

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

When Third-Party Verification is Not Required [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 accept a tenant-declaration as the only means of verification or on-line documentation. 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 [HCV GB, p. 18].

Primary Documents

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

Imputed Assets

OHA may accept a self-certification from the family as verification of assets disposed of for less than fair market value. [HCV GB, p. 5-28].

OHA Policy
OHA will accept tenant-declaration from a family as verification of assets disposed of for less than fair market value.

Value of Assets and Asset Income [24 CFR 982.516(a)]

For families with net assets totaling $5,000 or less, OHA may accept the family's declaration of asset value and anticipated asset income. However, OHA is required to obtain third-party verification of all assets regardless of the amount during the intake process and at least every three years thereafter. If third party verification is not available OHA must document in the file why it was not available.

OHA Policy

OHA will require all families to provide verification of the value of assets and asset income in all cases.

OHA will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every three years thereafter.

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 (See Chapter 11)

When OHA was required to obtain third-party verification but instead relies 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.

Primary Verification Documents	
Verification of Legal Identity for Adults	**Verification of Legal Identity for Children**
1. Current, valid driver's license or California identification card or 2. Current U.S. passport or 3. U.S. Military Identification Cards or 4. Permanent Residence ID	1. Certificate of birth or 2. Permanent Residence ID or 3. Adoption papers or 4. Custody agreement or 5. Health and Human Services ID or 6. Certified school records

If none of the primary documents are available for to establish legal identity for adults OHA will require any two of these documents:

- Original copy of a certificate of birth
- Alien Registration Receipt Card (Form I-155)
- Temporary Resident Card (Form I-688)
- Arrival-Departure Record (Form I-94)
- Consulate or city issued identification cards
- Church issued baptismal certificate
- U.S. military discharge (DD 214)
- Voter's registration card
- Company/agency identifications cards

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 the primary documents can be provided to establish legal identity of adults, then OHA may require two forms of alternative documentation to verify identity as specified in the Department's approved alternative documentation.

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 him or herself to be a participant.

At the time of admission if the applicant is unable to provide one of the documents required in the primary group or two documents on thealternative documents list , legal identity will have to be verified through the use of fingerprinting.

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 and are part of a mixed household where at least one member has eligible US citizenship or immigration status. Exemptions also include, existing program participants who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

Note that an individual who previously declared to have eligible immigration status may not change his or her declaration for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements. Nor may the head of household opt to remove a household member from the family composition for this purpose.

OHA must accept the following documentation as acceptable evidence of the social security number:

1. An original SSN card issued by the Social Security Administration (SSA)
2. An original SSA-issued document, which contains the name and SSN of the individual
3. An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual, along with other identifying information of the individual

While PHAs must attempt to gather third-party verification of SSNs prior to admission as listed above, PHAs also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the PHA has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, the PHA must document why the other SSN documentation was not available.

If the tenant's SSN becomes verified in EIV, then no further verification is required. If the tenant's SSN fails the SSA identity match, then the PHA must obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains

the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.

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 participant if the document is not an original document, if the original document has been altered, mutilated, or is not legible, or if the document appears to be forged.

OHA Policy

OHA will explain to the applicant or participant 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.

In the case of Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals, applicants may be admitted to the program without providing the requested

documentation, however, the required documentation must be provided within 90 calendar days from the date of admission into the program. OHA may grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen. If upon the expiration of the provided time period, the individual fails to comply with the SSN disclosure and documentation requirements, OHA must terminate the individual's assistance.

If an applicant family includes a child under six years of age who joined the household within the six months prior to the date of voucher issuance, an otherwise eligible family may be admitted to the program and the family must provide documentation of the child's SSN within 90 days of the effective date of the initial HAP contract. A 90-day extension will be granted if OHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant'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 the participant 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 participant 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 participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household. The child will have an ALT ID generated during this time. Upon the expiration of the time period provided, if the family has not complied with the SSN disclosure and documentation requirements, OHA must terminate the entire family's assistance.

If the family submits falsified SSN documentation, OHA must terminate assistance.

OHA is required to retain the EIV Summary Report or Income Report in each family file as confirmation of compliance with the SSN disclosure, documentation and verification requirements. Electronic retention is permissible.

OHA Policy

OHA will grant one additional 90-day extension if needed for reasons 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.

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 participants 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 EIV reports 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 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. Refer to self-certification procedures.
Age must be verified only once during continuously-assisted occupancy.

7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants 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 or Registered Domestic Partnership

OHA Policy

Certification by the head of household is normally sufficient verification. If OHA has reasonable doubts about a marital relationship or registered domestic partnership status, OHA will require the family to document the relationship.

A marriage certificate generally is required to verify that a couple is married.

Separation or Divorce

OHA Policy
Certification by the head of household is normally sufficient verification. If OHA has reasonable doubts about a separation or divorce, it will require the family to document the divorce, or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

Absence of Adult Member

OHA Policy
If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

Foster Children and Foster Adults

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

7-II.E. VERIFICATION OF STUDENT STATUS
General Requirements

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 reports full-time student status for an adult other than the head, spouse, or cohead.
- The family reports child care expenses to enable a family member to further his or her education.
- The family includes a student enrolled in an *institution of higher education.*

Valid documentation of student status includes school transcripts demonstrating completion of full-time student status for the previous semester(s) and the continued enrollment in an approved program.

Restrictions on Assistance to Students Enrolled in Institutions of Higher Education
This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

OHA Policy
In accordance with the verification hierarchy described in Section 7-1.B, OHA will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:

- The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see Section Exhibit 3-2).
- The student is at least 24 years old.
- The student is a veteran, as defined in Section 3-II.E.
- The student is married.
- The student has at least one dependent child, as defined in Section 3-II.E.

If OHA cannot verify at least one of these exemption criteria, OHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, OHA will then proceed to verify either the student's parents' income eligibility (see Section 7-III.J) or the student's independence from his/her parents (see below).

Independent Student

OHA Policy
OHA will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

- Either reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see Section 3-II.E)
- Reviewing the student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E.)
- Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is $0, except in cases in which OHA determines that the student is a *vulnerable youth* (see section 3-II.E.).

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 participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at http://www.hhs.gov/ocr/privacy/.

The above-cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

Verification of receipt of 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 SSI or other disability payments from the SSA, OHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system when it is available, or HUD's Tenant Assessment Subsystem (TASS). If documentation from HUD's EIV System or TASS is not available, OHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), OHA will ask the family or assist the family in requesting a benefit verification letterby either calling SSA at 1-800-772-1213, or by requesting it from www.socialsecurity.gov. Once the applicant or resident receives the benefit verification letter they will be required to provide it to OHA for copying and the original will be returned to the individual.

Family Members Not Receiving SSA Disability Benefits

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603.

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 OHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy [24 CFR 5.508(g)(5)].

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.
OHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

OHA Policy

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

Eligible Immigrants

Documents Required

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

OHA Verification [HCV GB, pp 5-3 and 5-7]

For family members under the age of 62 who claim to be eligible immigrants, OHA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

For family members who age 62 or older are eligible immigrants. No further verification of eligible immigration status is required. Proof of age is required in manner described in 7-II.C.

OHA will follow all USCIS protocols for verification of eligible immigration status.

7-II.H. VERIFICATION OF PREFERENCE STATUS

OHA must verify any preferences claimed by an applicant that determined his/her placement on the waiting list.

7-II.I. VERIFICATION OF STATE LIFETIME SEX OFFENDER REGISTRATION [Notice: PIH 2012-28]

OHA Policy

Annual reexamination documents will include a question asking whether the participant or any member of the participant's household is subject to a lifetime sex offender registration program in any state.

OHA will verify sex offender information using the Dru Sjodin National Sex Offender Database or other national databases; and document this information in the same method used at admission.

For any admissions after June 25, 2001 (the effective date of the Screening and Eviction for Drug Abuse and Other Criminal Activity final rule), if the reexamination screening reveals that the participant or a member of the participant's household is subject to a lifetime sex offender registration requirement, or that the participant has falsified information or otherwise failed to disclose his or her criminal history on their reexamination forms, OHA will pursue termination of tenancy to the extend allowed by their lease and state or local law.

OHA Policy

Notwithstanding the above, if the participant or member of the participant's household, regardless of when they were admitted, commits criminal activity while living in federally assisted housing, OHA will pursue eviction or termination of tenancy to the extend allowed by their lease and state or local law.

PART III: VERIFYING INCOME AND ASSETS

Chapter 6, Part I of this Plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides OHA policies that supplement the general verification procedures specified in Part I of this chapter.

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 and tips anticipated to be received in the coming year.

Wages

OHA Policy

When OHA require third-party verification 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 to file tax returns, The PHA will obtain a completed copy of IRS Form 4506-T to verify that no return has been filed.

For those employed in "gig employment" (i.e., those in formal agreements with on-demand companies such as Uber, Lyft, or DoorDash), the PHA will provide a format for the individual to declare their income and expenses. The PHA will also review the printed statement of monthly income from the applicable app for all hours worked and pay received as well as the 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 11.

Social Security/SSI Benefits [Notice PIH 2023-27]

Verification requirements for Social Security (SS) and Supplemental Security Income (SSI) benefits differ for applicants and participants.

For applicants, since EIV does not contain SS or SSI benefit information, the PHA must ask applicants to provide a copy of their current SS and/or SSI benefit letter (dated within the last 120 calendar days) for each family member that receives SS and/or SSI benefits. If the family is

unable to provide the document or documents, the PHA should help the applicant request a benefit verification letter from SSA's website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. The PHA must obtain the original benefit letter from the applicant, make a photocopy of the document for the file, and return the original to the family. For participants, the PHA must obtain information through the HUD EIV system and confirm with the participants that the current listed benefit amount is correct.

- If the participant agrees with the amount reported in EIV, the PHA must use the EIV-reported gross benefit amount to calculate annual income from Social Security. PHAs are required to use the EIV-reported SS and SSI benefit amounts when calculating income unless the tenant disputes the EIV-reported amount. For example, an SSA benefit letter may list the monthly benefit amount as $450.80 and EIV displays the amount as $450.00. The PHA must use the EIV-reported amount unless the participant disputes the amount.
- If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in EIV, the PHA must request a current SSA benefit verification letter (dated within the last 120 calendar days) from each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the PHA should help the participant request a benefit verification letter from SSA's website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. The PHA must obtain the original benefit letter from the participant, make a photocopy of the document for the file, and return the original to the family.

Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits.

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 way OHA will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it ***receives regular payments***, verification will be sought in the following order.

If payments are made through a state or local entity, OHA will request a record of payments for the past 12 months and request that the entity disclose any known information about the likelihood of future payments.
Third-party verification from the person paying the support
Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules
Copy of the latest check and/or payment stubs
Family's self-certification of amount received and of the likelihood of

support payments being received in the future, or that support payments are not being received.

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. OHA 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 Chapter 3. 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 OHA 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, through the Director or designee, the value of assets disposed of only if:

OHA does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a $10,000 certificate of deposit at the last annual reexamination and OHA verified this amount. Now the person reports that she has given this $10,000 to her son. OHA has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.
Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, OHA 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 certificationfrom 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]

OHA is 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 OHA does not accept self-certification of assets. OHA 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 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).

OHA 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, OHA has 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, or income excluded under the earned income disallowance)..

OHA Policy

OHA will accept the family's tenant-declaration 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.I. ZERO INCOME STATUS REVIEWS [Notice PIH 2023-27]

A *zero income review* is an assessment, sometimes periodic, performed by the PHA of the income of a family who claims that they do not receive income from any source, including from assets. During such reviews, it is common for PHAs to request that families complete and sign a worksheet explaining how they pay for the household's expenses. HUD does not require PHAs to conduct periodic zero income reviews. In calculating annual income, PHAs must not assign monetary value to nonmonetary in-kind donations from a food bank or similar organization received by the family [24 CFR § 5.609(b)(24)(vi)]. PHAs that perform zero income reviews must update local discretionary policies, procedures, and forms. Families who begin receiving income which does not trigger an interim reexamination should no longer be considered zero income even though the family's income is not reflected on the Form HUD-50058.

OHA Policy

OHA will check UIV sources and/or 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 PHA policy in Chapter 11.

7-III.M. STUDENT FINANCIAL ASSISTANCE

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 third-party written verification of both the source and the amount of

student financial assistance. Family-provided documents from the educational institution attended by the student as well as from 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 f 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.

7-III.N. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents or a *vulnerable youth* in accordance with PHA policy [24 CFR 5.612, FR 4/10/06, p. 18146, and FR Notice 9/21/16].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

OHA Policy

If OHA is required to determine the income eligibility of a student's parents, OHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in Section 3-II.E). The PHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to OHA. The required information must be submitted (postmarked) within 10 business days of the date of OHA's request or within any extended timeframe approved by OHA.

OHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

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 (6-II.C.) for a discussion of the deduction. OHA will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

7-IV.B. HEALH AND MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in Chapter . 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. The PHA may not request documentation beyond what is sufficient to determine anticipated health and medical care costs. Before placing bills and documentation in the tenant file, the PHA must redact all personally identifiable information [FR Notice 2/14/23].

Amount of Expense

OHA Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts.

When income is projected at new admission or interim, 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.

When income is projected at new admission or interim, 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 medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

Eligible Household
The 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 expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for OHA's policy on what counts as a medical expense.

Unreimbursed Expenses
To be eligible for the health and medical care expenses deduction, the costs must not be reimbursed by another source.

OHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

Expenses Incurred in Past Years

OHA Policy

At new admission and interim reexam, w hen 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. The PHA may not request documentation beyond what is sufficient to determine anticipated reasonable attendant care and auxiliary apparatus costs. Before placing bills and documentation in the tenant file, the PHA must redact all personally identifiable information [FR Notice 2/14/23].

Amount of Expense
Attendant Care

OHA Policy

OHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or cancelled checks.

Third-party verification form signed by the provider, when possible

If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source

When income is projected at new admission or interim, 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 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:

Third-party verification of anticipated purchase costs of auxiliary apparatus

If third-party is not possible, billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months

If third-party verification 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 seek third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

Unreimbursed Expenses

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

OHA Policy

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.
The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6. 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 years 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 in accordance with Alameda County Self Sufficiency Index .

Eligible Child

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. OHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

Unreimbursed Expense

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

OHA Policy

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.
The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

Pursuing an Eligible Activity

OHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

OHA Policy

Information to be Gathered
OHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.
Seeking Work

Whenever possible OHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases OHA will request verification from the agency of the member's job seeking efforts to date and require the family to submit to OHA any reports provided to the other agency.
In the event third-party verification is not available, OHA will provide the family with a form on which the family member must record job search efforts. OHA will review this information at each subsequent reexamination for which this deduction is claimed.
Furthering Education
OHA will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.
Gainful Employment
OHA will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

Allowable Type of Child Care
The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

OHA Policy

OHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6.
OHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).
OHA will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses
Only reasonable child care costs can be deducted.

OHA Policy

The actual costs the family incurs will be compared with OHA's established standards, which are the Alameda County expense limits of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

If the family presents a justification for costs that exceed typical costs in the area, OHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

Exhibit 7-1: Summary of Documentation Requirements for Noncitizens
[HCV GB, pp. 5-9 and 5-10)

<table>
<tr><td colspan="2">

- **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.

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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.

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All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

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<tr><td>

- 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"

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- 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).

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<tr><td>

- Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210".

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Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".

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</table>

- 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*

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CHAPTER 8

HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits PHAs to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and OHA-established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least annually during the term of the contract.

All units must pass an HQS inspection prior to the approval of a lease and at least once every 24 months during the term of the contract, and at other times as needed, to determine that the unit meets HQS. Effective July 1, 2014, PHAs may establish a policy for performing unit inspections biennially rather than annually. This policy could apply to some or all assisted units. PHAs still have the option to inspect every unit annually. See Section 8-II.G for further details.

HUD also requires PHAs to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and OHA requirements related to housing quality and rent reasonableness as follows:

> Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.
>
> Part II. The Inspection Process. This part describes the types of inspections OHA will make and the steps that will be taken when units do not meet HQS.
>
> Part III. Rent Reasonableness Determinations. This part discusses the policies OHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

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 process to explore and test innovative methods of delivering HCV program assisted housing 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 Section 8 rules and regulations apply.

Under MTW Authority OHA may:

- Certify that housing assisted under MTW will meet housing quality standards established or approved by HUD. The certification form will be approved or provided by HUD. *This authorization waives certain provisions of Section 8(o)8 of the 1937 Act and 24 CFR 982, Subpart I as necessary to implement the Agency's Annual MTW Plan.*

- Authorized to adopt a local process for determining whether units meet certain eligibility requirements, provided such requirements are part of the 1937 Act. *This authorization waives certain provisions of Section 8(o)(13) of the 1937 Act and 24 CFR 983, Subpart D as necessary to implement the Agency's Annual MTW Plan.*

  This includes, but is not limited to:

  a. The minimum expenditure requirements and the timing of the rehabilitation and construction of units.

  b. The type of funds that may be used to rehabilitate or construct units.

  c. Procedures to determine whether or not units meet the Agency's requirements regarding rehabilitation and construction, including what information is required to be submitted by owners to the Agency.

PART I: PHYSICAL STANDARDS

8.I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors
- Carbon Monoxide Detectors

A summary of HUD performance criteria is provided in Exhibit 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

Tenant Preference Items

HUD requires PHAs to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, OHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Exhibit 8-2 summarizes those items that are considered tenant preferences.

Modifications to Provide Accessibility

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained.[24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

OHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to OHA for review.

8.I.B. ADDITIONAL LOCAL REQUIREMENTS

OHA may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if the PHA additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

OHA Policy

1. OHA will impose the additional quality standards listed below:
2. In each room used for living/sleeping, there will be at least one exterior window that can be opened.
3. Owners will be required to scrape peeling paint and repaint all surfaces cited for peeling paint with 2 coats of non-lead paint. An extension may be granted as a severe weather related item as defined below.
4. In units where the tenant must pay for utilities, each unit **must** have separate metering device(s) for measuring utility consumption and direct billing by the utility service provider.
5. A ¾" overflow pipe must be present on the hot water heater safety valves and installed down to within 6 inches of the floor. The discharge line must be PVC or galvanized steel (copper).
6. The hot water heater, boiler or any system holding water must have an earthquake strap.
7. Gas water heaters require a safety divider or shield if they are located in a living/sleeping room. A safety divider or shield is not required if the water heater is located in the kitchen, as long as it does not present a safety hazard to the occupants.
8. Where window security bars are present in rooms used for living/sleeping, there must be at least one release mechanism in good working order in each room. Owners will be referred to the City of Oakland's Fire Prevention Bureau for additional requirements regarding smoke detector and any further guidance.
9. The address of the unit must be clearly displayed.
10. Each bedroom must have a closet.

Thermal Environment [HCV GB p.10-7]

The PHA must define a "healthy living environment" for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

OHA Policy

The heating system must be capable of maintaining an interior temperature of 68 degrees Fahrenheit between October 1 and May 1.

Clarifications of HUD Requirements

OHA Policy

As permitted by HUD, OHA has adopted the following specific requirements that elaborate on HUD standards.

Walls

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

Windows

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (applies only if screens are present).

Doors

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be able to be opened without the use of a key.

Deadbolt locks on exterior doors and gates must be single cylinder. Locks must be able to be opened from the inside without a key.

Floors

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state without tripping hazards present. Raw wood or unsealed concrete is not permitted.

All floors should have some type of baseboard, trim, or sealing for a "finished look." Vinyl baseboard is permitted.

Sinks

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

Security

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system. OHA may have the family use the quick release at the inspection to ensure the family knows how to use the release system.

Appliances

All required appliances must be in proper operating condition.

Mailbox

Each unit must have its own mailbox that is clearly marked.

Inspections of Water heaters for Multiple Units

If a water heater/boiler has been inspected in the last six months and can be certified by OHA, it will NOT be considered an HQS fail item.

If there is a shared or multiple water heaters/boilers (two or more) that are located in a public area or in another unit, it will not be necessary to inspect the water heater again if both conditions below exist:

1. OHA cannot gain access to the area where the water heater/boiler is located and

2. OHA can certify that the water heater has been inspected and passed HQS in the last six months.

Specific to the hot water heater, it will noted as passing the HQS inspection.

This does not include multiple units that have individual hot water heater located in each unit and single family dwelling units.

8.I.C. LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires PHAs to define life-threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life-threatening conditions within 24 hours or any other specified time, of PHA notification.

OHA Policy

The following are considered life-threatening conditions:

Any condition that jeopardizes the security of the unit

Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling

Natural or LP gas or fuel oil leaks

Any electrical problem or condition that could result in shock or fire

Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit

Utilities not in service, including no running hot water

Conditions that present the imminent possibility of injury

Obstacles that prevent safe entrance or exit from the unit

Absence of a functioning toilet in the unit

Inoperable smoke detectors and carbon monoxide detectors

If an owner fails to correct life-threatening conditions as required by OHA, the housing assistance payment will be abated and the HAP contract will be terminated. See 8-II-G.

If a family fails to correct a family caused life-threatening condition as required by OHA, OHA may terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless OHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit upon move out under state law or court practice.

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

8-I-E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the PHA must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the PHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the PHA will take action in accordance with Section 8-II.G.

OHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

OHA Policy

The Oakland Housing Authority has an established partnership and Memorandum of Understanding executed with the Alameda County Lead Poisoning Prevention Program (ACLPPP) for sharing and cross-referencing public health department records in identifying children having an environmental intervention blood levels and residing in Section 8 assisted properties. ACLPPP performs all lead hazard risk assessments at Section 8 assisted properties and OHA initiates any required HQS enforcement action with the participant landlord.

8-I-F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403, 24 CFR 982.403]

A dwelling unit must:

- Provide adequate space and security for the family
- Have at least one bedroom or living/sleeping room for each two persons

A unit that does not meet these HQS space standards is defined as *overcrowded*.
A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. A bedroom or living/sleeping room must have at least:

- One window
- Two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets)

If OHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, OHA must issue the family a new voucher, and the family and OHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, OHA must terminate the HAP contract in accordance with its terms.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

OHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections*. OHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Biennial Inspections*. HUD requires OHA to inspect each unit under lease at least biennially, depending on OHA policy, to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's scheduled reexamination but also may be conducted separately. OHA may when deemed necessary inspect annually.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between routinely scheduled inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

Inspection of OHA-owned Units [24 CFR 982.352(b)]

OHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in an OHA-owned unit (including a unit owned by an entity substantially controlled by OHA). The independent agency must communicate the results of each inspection to the family and OHA. The independent agency must be approved by HUD, and may be the unit of general local government.

OHA Policy

OHA will use an independent entity approved by HUD to perform the required rent reasonableness determinations and housing quality standards (HQS) inspections in any unit where OHA has an identity of interest in the property. The rent determinations and HQS inspections may be performed by a third party vendor contracted by the independent entity.

Inspection Costs [Notice PIH 2016-05]

OHA may not charge the family for unit inspections [24 CFR 982.405(e)]. In the case of inspections of OHA-owned units, OHA may compensate the independent agency from ongoing administrative fee for inspections performed. OHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].
OHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, OHA is allowed to

charge a reasonable fee to owners for reinspections in two situations: when the owner notifies the PHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to OHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

OHA Policy

The Executive Director, or his designee, will determine if OHA will charge a fee for failed reinspections, and OHA will publicize any such charge in the MTW Annual Plan.

Notice and Scheduling

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

OHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 5:00 p.m. Generally inspections will be conducted on business days only. In the case of a life-threatening emergency, OHA will give as much notice as possible, given the nature of the emergency.

Attendance at inspections by owner and family

HUD permits OHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27; OHA MTW Annual Plan Activity #17-01].

OHA Policy

When a family occupies the unit at the time of inspection an adult Family Member over the age of 18 must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, OHA will inspect the unit in the presence of the owner or owner's representative. The presence of the participant or a family representative is also required at an initial inspection.

For prequalifying inspections, the presence of the participant or family representative is not required. The participant will be required to accept the unit in existing condition before the HAP contract is executed, by signing any OHA required forms to that effect. Anytime during the 60 day period after inspection if a unit is deemed to be out of compliance with HQS standards, the regular inspection process will be resumed.

8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a); OHA MTW Annual Plan Activity # 17-01]

Timing of Initial Inspections

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires OHA, to the extent practicable, to complete such inspection and determination within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

OHA Policy

OHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 10 business days of submission of the Request for Tenancy Approval (RTA).

OHA may conduct a prequalifying unit inspection that will be good for 60 days and the owner or an owner agent must be present during the inspection. The owner will be notified at the end of the inspection process of the pass or fail status of the inspection.

The owner will have 60 days after passing unit passes a prequalifying inspection to execute a HAP contract which includes but is not limited to:

- OHA tenant acceptance forms
- Completed RTA
- Acceptable rent offer
- Lease agreement

No extensions to the 60 day period will be granted.

Inspection Results and Reinspections

OHA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by OHA for good cause. The owner has 10 business days from the date of notification to call OHA to request a reinspection. OHA will reinspect the unit within 10 business days of the date the owner notifies OHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any PHA-approved extension) has elapsed, or the unit fails HQS at the time of the reinspection, OHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. OHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish to live in the unit.

Utilities

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

OHA Policy

If utility service is not available for testing at the time of the initial inspection, OHA will allow the utilities to be placed in service after the unit has met all other HQS requirements. OHA will reinspect the unit to confirm the utilities are on and all associated components and systems meet HQS before a HAP contract is executed.

Appliances

OHA Policy

If the family is responsible for supplying the stove and/or refrigerator, OHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before OHA executes the HAP contract. OHA will execute the HAP contract based upon a certification from the family and the landlord that the appliances have been installed and are working.

8.II.C. BIENNIAL HQS INSPECTIONS [24 CFR 982.405(a)]

Scheduling the Inspection

Each unit under HAP contract must have a biennial inspection no more than 24 months after the most recent inspection.

OHA Policy

If an adult over the age of 18 cannot be present on the scheduled date, the family should request that OHA reschedule the inspection. OHA and family will agree on a new inspection date that generally should take place within 10 business days of the originally-scheduled date. OHA may schedule an inspection more than 10 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, OHA will automatically schedule a second inspection. If the family misses two scheduled inspections without OHA approval, OHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

Risk-Based Inspections

MTW process and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard Section 8 rules and regulations apply. Under MTW authority, OHA may implement Risk-Based Inspections protocol to in lieu of the HUD biennial HQS inspection requirement for units assisted under the HVC program. All units rented by families assisted under the HCV program must meet HQS. Risk Based Inspections protocol only alters the frequency in which units are inspected. This protocol will be less intrusive for participant families and property owners that maintain units in good condition.

Risk-Based Inspection Protocol:
Biennial inspection will be conducted as usual. The result of the biennial inspection will result in one of the following outcomes:

1. Pass on first inspection
   Result: Schedule next inspection in 24 months
2. Pass on second inspection
   Result: Schedule next inspection in 24 months.

- Properties that pass their first inspection and are Housing Quality Standards (HQS) compliant need only be inspected biennially.
- Properties that fail on the first inspection and require a second inspection which has a life threatening fail item to meet Housing Quality Standards will require an annual inspection schedule to ensure compliance with the Housing Quality Standards.
- Units that are have no or zero HAP payments will not be inspected

8-II.D. SPECIAL INSPECTIONS [24 CFR 982.405(g)]

If a participant or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, OHA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

OHA Policy

OHA will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit. If the reported condition is not life-threatening (i.e., OHA would require the owner to make the repair within no more than 30 calendar days), then OHA must inspect the unit within 15 days of when OHA received the complaint.

During a special inspection, OHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled OHA may elect to conduct a full annual inspection.

OHA may conduct a Special Inspection of a unit where the owner is requesting a rent increase that exceeds 9% of the current HAP contract rent to confirm amenities and ensure the unit meets HQS.

8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b), HCV GB p. 10-32]

HUD requires a PHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include:

(1) Each type of inspection (initial, annual, biennial, and special),

(2) Inspections completed by each inspector, and

(3) Units from a cross-section of neighborhoods.

8.II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT [HCV GB 10.6]

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all and failed inspections. When an inspection identifies HQS failures, OHA will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

OHA Policy

When life-threatening conditions are identified, OHA will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of OHA's notice.

When failures that are not life threatening are identified, OHA will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally not more than 28 days will be allowed for the correction.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any OHA-approved extension), the owner's HAP will be abated in accordance with OHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any OHA-approved extension, if applicable) the family's assistance will be terminated in accordance with OHA policy (see Chapter 12).

Extensions

For conditions that are life threatening, PHAs cannot grant an extension to the 24-hour corrective action period. For conditions that are not life threatening, a PHA may grant an exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate [24 CFR 982.404].

OHA Policy

Extensions will be granted in cases where OHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

A repair cannot be completed because required parts or services are not available.

A repair cannot be completed because of weather conditions.

A reasonable accommodation is needed because the family includes a person with disabilities.

Capital Improvement Payment approved

The owner must request an extension within 15 days of the date the item failed inspection. The length of the extension will be determined on a case-by-case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

Reinspections

OHA Policy

OHA will conduct a reinspection immediately following the end of the corrective period, or any OHA approved extension.

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, OHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with OHA policies. If OHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, OHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8.II.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct HQS deficiencies by the time specified by the PHA, HUD requires the PHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

OHA Policy

OHA will make all HAP abatements effective the first day of the month following the date of the failed inspection or expiration of the OHA specified correction period (including any extension).

OHA will inspect abated units within 10 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

HAP Contract Termination

The PHA must decide how long any abatement period will continue before the HAP contract will be terminated. The PHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. The PHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

OHA Policy

The maximum length of time that a HAP contract may be abated is 90 day*s.* However, if the owner completes corrections and notifies OHA before the termination date of the HAP contract, OHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by OHA is 30 days.

8.II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by OHA (and any extensions), OHA will terminate the family’s assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

8-II.I. VERIFICATION OF REPAIRS

Verifying HQS Deficiencies through Owner/Tenant Self-Certification and Virtual Methods

If the PHA determines that a unit does not meet the Housing Quality Standards (HQS) requirements during an annual, biennial, Complaint, Quality Control, or Special inspection, verification that the deficiencies are corrected may be done by means other than an in-person re-inspection.

The regulation at 24 CFR 982.404(a)(3) states that the PHA must verify the correction of deficiencies but does not prescribe a particular method. For example, a PHA may accept an owner's certification, a receipt from a vendor, a photo of the repair or tenant confirmation that required repairs are complete and then verify the repair at the next on-site inspection. Further, a PHA may tie the verification process to the severity of corrections needed and/or its experience with the owner and property.

The Federal guidelines that govern the Section 8 Program require that repairs be made timely. Therefore, Certification of Repairs form must be signed by both the owner and the tenant and returned within 30 days from the inspection date or by the designated return date, whichever is sooner. The same timeframe applies to virtual inspections.

Written notification to the owner and/or tenant is required for all items for which fail or are inconclusive. The notice must include a list of HQS deficiencies and the correcting deadline. Reinspection or PHA verification that failed and/or inconclusive items are corrected is required.

Initial inspections/Project Base Units

In the case of initial inspections, the PHA is required to conduct an actual follow-up on-site inspection if the unit does not pass HQS pursuant to the initial inspection. Additionally, in the case of project based vouchers, the PHA is required to conduct follow-up inspections to determine if the HQS deficiency is corrected pursuant to 24 CFR 983.103(e)(2). Please refer to Notice PIH 2011-29 for additional information related to HQS inspections.

Who Qualifies for Self- Certification of repair?

Owners and participants who have distinguished themselves as responsible and responsive through consistent Housing Quality Standards (HQS) pass rates are permitted to self-certify the repair of minor (non-life threatening) HQS fail items on the Annual, Complaint, Quality Control and Special Inspection.

8.II.J. Capital Improvement Payment

Owners that fail a second inspection may be offered the option to apply for a Capital Improvement Payment of up to $2,500 for acceptable repairs or improvements to the unit. Once

approved, repayment of the amount approved to OHA will occur through reduced HAP payments to the owner over approximately a 6 month period. Owners will be subject to existing deadlines for abatement.

PART III: RENT REASONABLENESS [24 CFR 982.507]

8-III.A. OVERVIEW

Except in the case of certain LIHTC assisted unit, no HAP contract can be approved until OHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

OHA-owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in an OHA-owned unit, OHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. An OHA-owned unit is defined as a unit that is owned by OHA (including a unit owned by an entity substantially controlled by OHA). The independent agency must communicate the results of the rent reasonableness determination to the family and OHA. The independent agency must be approved by HUD.

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-initiated Rent Determinations

OHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

Initial Lease Term

The owner and family first negotiate the rent for a unit. OHA (or an independent agency in the case of OHA-owned units) will assist the family with the negotiations upon request. At initial occupancy OHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. OHA will notify the owner of the rent that can be approved based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. OHA will confirm the accuracy of the information provided. If the information submitted is accurate, OHA will consider this additional information along with its own comparability data when making rent determinations. The owner must submit any additional information within 5 business days of OHA's request for information or the owner's request to submit information.

LIHTC- and HOME-Assisted Units [24 CFR 982.507(c)]

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the PHA for the unit size involved.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. OHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms

The type of unit including construction type (e.g., single family, duplex, triplex, fourplex, apartment, townhouse/condo)

- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent.
- Special inspections may be conducted to confirm all of the above.

Units that Must Not be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

Note: Notice PIH 2011-46, issued August 17, 2011, provides further guidance on the issue of what constitutes an assisted unit.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the PHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the PHA information regarding rents charged for other units on the premises.

8-III.D. PHA RENT REASONABLENESS METHODOLOGY

How Market Data is Collected

OHA Policy

OHA will primarily use the GoSection 8 database for rent reasonableness determinations. GoSection 8 is a national internet based rent reasonableness service that gathers, organizes and maintains a database of market-based comparable units. The service captures all of the HUD required key elements for rent reasonableness determinations. The Go Section 8 database will also be supplemented by comparables entered directly by OHA. OHA also collects its own data on market rents in Oakland. Information sources will include newspapers, internet rental listings, information from rental agencies, market surveys, comparables submitted by owners, data from the County Assessor's office and other available sources.

In the analysis of market rent data, primary consideration will be given to actual as opposed to advertised rents when available. The data will be maintained by proximity within the city, bedroom size, housing type and amount of rent. Information will also be collected about the number of bathrooms, utilities paid by the owner and tenant, appliances provided by the owner and tenant, the availability of laundry facilities and parking, amenities available and whether or not the property has accessibility features. Data will be updated on an ongoing basis and rent information that is more than 6 months old will be purged unless data for a particular neighborhood is scarce.

How Rents are Determined

OHA Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. When considering approval of a requested rent, OHA will develop a range of prices for comparable units based on location, bedroom size and unit type. Comparison of the proposed rent within this range will be based on general unit condition, the number of bathrooms, the utilities that must be paid by the tenant, whether or not appliances are provided, the availability of laundry facilities and parking, amenities available and whether or not the property has accessibility features. More of these features will result in an approved rent that is at the higher end of the range for a given market area, fewer will result in an approved rent that is lower on the range. Consideration will also be given to exceptionally remodeled or brand new units (less than two-years old). These units may command a rent that is slightly above the range for older comparable units in a given market area.

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of $500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $500 x 11 months = 5500/12 months = actual monthly rent of $488.

8-III.E. RENT ADJUSTMENTS

After the Initial Lease Term

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, OHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises OHA will consider unit size and length of tenancy in the other units. OHA will use methods similar to those discussed in Section 8-III.D. when determining rent adjustments for occupied unit. OHA will also take into consideration the impact to the tenant when determining reasonable rent adjustments.

OHA Policy

The owner must issue a 60-Day notice to the tenant of the intent to increase the rent. A copy of such notice must accompany a rent increase request to OHA. The subject unit must be in compliance with HQS as determined by an inspection conducted and passed prior to the proposed effective date of the increase. The owner may submit information about other comparable units in the market area when making a rent increase request. OHA will confirm the accuracy of the information provided. If the information submitted is accurate, OHA will consider this additional information along with its own comparability data when making rent determinations.
OHA will determine whether the requested increase is reasonable within 30 business days of receiving a complete request from the owner. The owner will be notified of the determination in writing within 10 days there after. All rent adjustments will be effective the first of the month following 60 days after OHA's receipt of the owner's complete request or on the date specified by the owner, whichever is later.

Automatic Rent Increase (pending HUD approval of activity 17-02)
OHA may elect to offer owners an automatic rent increase on the annual HAP contract anniversary date of an amount to be determined by OHA on an annual basis, if the owner has not had a rent increase in the last year. This activity may apply to a pilot group of owners initially and be implemented to a wider population after evaluation of the pilot.

OHA- and HUD-Initiated Rent Reasonableness Determinations

HUD requires PHAs to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct OHA to make a determination at any other time. OHA may decide that a new determination of rent reasonableness is needed at any time.

OHA Policy

In addition to the instances described above, OHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) OHA determines that the initial rent reasonableness determination was in error or (2) OHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- **HUD Notice PIH 2010-10, HQS Inspections for the Housing Choice Voucher Program and Guidance Related to Electrical Outlets. Issued May 31, 2010**

Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

Illumination and Electricity

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

Structure and Materials

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is

one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

Interior Air Quality

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the PHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors and Carbon Monoxide Detectors

Smoke detectors and carbon monoxide detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors and carbon monoxide detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and Heath/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities*. The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal*. The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security*. The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
- *Energy conservation items*. The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity*. The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.

(6) *Structure and Materials*. Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.

(7) *Indoor Air*. Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.

(8) *Sanitary Conditions*. The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.

(9) *Neighborhood conditions*. Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards, smoke detectors, and carbon monoxide detectors.

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CHAPTER 9

GENERAL LEASING POLICIES

INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for a PHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the PHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the PHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the PHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

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 process to explore and test innovative methods of delivering Section 8 Voucher assisted housing 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 Section 8 rules and regulations apply.

9-I.A. TENANT SCREENING

The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The PHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of OHA policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The PHA must also inform the owner or manager or his/her rights and obligations under the Violence against Women Act of 2013 (VAWA) [24 CFR 5.2005(a)(2)].

The PHA must provide the owner with the family's current and prior address (as shown in the PHA records); and the name and address (if known to the PHA) of the landlord at the family's current and prior address. [24 CFR 982.307 (b)(1)].

The PHA is permitted, but not required, to offer the owner other information in the PHA's possession about the family's tenancy [24 CFR 982.307(b)(2)].

The PHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].
The PHA may not disclose to the owner any confidential information provided in response to a PHA request for documentation of domestic violence, dating violence, sexual assault or stalking except at the written request or with the written consent of the individual providing the documentation
[24 CFR 5.2007(b)(4)].

OHA Policy

OHA will not screen applicants for family behavior or suitability for tenancy.

OHA will not provide additional screening information to the owner.

9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request OHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to OHA:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for OHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless OHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

OHA Policy

The RTA must be signed by both the family and the owner.

The owner may submit the RTA on behalf of the family.

Completed RTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, electronically, by mail, or by fax.

The family may not submit, and OHA will not process, more than one (1) RTA at a time.

When the family submits the RTA OHA will review the RTA for completeness.

If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, OHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, or by fax. OHA will not accept missing information over the phone.

When the family submits the RTA and proposed lease, OHA will also review the terms of the RTA for consistency with the terms of the proposed lease.

If the terms of the RTA are not consistent with the terms of the proposed lease, OHA will notify the family and the owner of the discrepancies.

Corrections to the terms of the RTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. OHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, OHA will attempt to communicate with the owner and family by phone, fax, or email. OHA will use mail when the parties can't be reached by phone, fax, or email.

9-I.C. OWNER PARTICIPATION

PHAs do not formally approve an owner to participate in the HCV program. However, there are a number of criteria where a PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

9-I.D. ELIGIBLE UNITS

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the PHA's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

The PHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

OHA Policy

Under MTW authority, OHA may determine property eligibility criteria, including types of units currently prohibited by Section 8 regulations, as well as shared living facilities. If the Agency chooses to use this authorization, it will provide a transition plan to both the affected residents and HUD prior to the end of the demonstration. ***This authorization waives certain provisions of Section 8(p) of the 1937 Act and 24 CFR 983.53-54 and Subparts H and M as necessary to implement the Agency's Annual MTW Plan.***

PHA-Owned Units [24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by the PHA issuing the voucher may also be leased in the voucher program. In order for a PHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a PHA-owned unit without any pressure or steering by the PHA.

OHA Policy

OHA does own eligible units available for leasing under the voucher program. OHA will give proper notice to program participants.

Special Housing Types [24 CFR 982 Subpart M]

HUD regulations permit, but do not generally require, PHAs to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that OHA has chosen to allow.

The regulations do require a PHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

Duplicative Assistance [24 CFR 982.352(c)]

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

Unit Size

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

Rent Burden [24 CFR 982.508]

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the dwelling unit rent must be at a level where the family's share of rent does not exceed 40 percent of the family's monthly adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

9-I.E. LEASE AND TENANCY ADDENDUM

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; the PHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

Lease Form and Tenancy Addendum [24 CFR 982.308]

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by OHA. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

OHA Policy

The owner must use a standard lease form for rental to unassisted tenants. OHA will not provide a model or standard dwelling lease for owners to use in the HCV program.

Lease Information [24 CFR 982.308(d)]

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

Term of Assisted Tenancy

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit PHAs to approve a shorter initial lease term if certain conditions are met.

OHA Policy

OHA will approve an initial lease term of less than one (1) year if agreed to by both the owner and participant family.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

A PHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

Security Deposit [24 CFR 982.313 (a) and (b)]

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the PHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

OHA Policy

OHA will allow the owner to collect any security deposit amount the owner determines is appropriate, provided this amount is in accord with state and local law. Therefore, no modifications to the HAP contract will be necessary.

Separate Non-Lease Agreements between Owner and Tenant

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus the PHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

OHA Policy

OHA permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease. A copy of any such agreement must be provided to OHA.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family. A copy of any such agreement must be provided to OHA.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property. A copy of any such agreement must be provided to OHA.

PHA Review of Lease

HUD requires PHAs to review the dwelling lease for compliance with all applicable HCV program requirements.

OHA Policy

If the dwelling lease is incomplete or incorrect, OHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, electronically, by mail, or by fax. OHA will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, OHA will attempt to communicate with the owner and family by phone, fax, or email. OHA will use mail when the parties can't be reached by phone, fax, or email.

PHAs are permitted, but not required, to review the lease to determine if the lease complies with State and local law and are permitted to decline to approve the tenancy if the PHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)].

OHA Policy

OHA will not review the owner's lease for compliance with state/local law. However, if it is determined prior to approval of the HAP contract that the lease does not comply with state/local law, then OHA will not approve the tenancy.

9-I.F. TENANCY APPROVAL [24 CFR 982.305]

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the PHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the PHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the PHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must is reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the PHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

OHA Policy

OHA will complete its determination within 15 business days of receiving all required information.

If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with OHA, OHA will obtain corrected copies of the RTA and proposed lease, signed by the family and the owner.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. OHA will not accept corrections over the phone.

If OHA determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. OHA will instruct the owner and family of the steps that are necessary to approve the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), OHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305] (owner payment subject to HUD approval of MTW activity)

The HAP contract is a written agreement between the PHA and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements.

The HAP contract format is prescribed by HUD.

If OHA has given approval for the family of the assisted tenancy, the owner and OHA execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

PHAs are permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

PHAs must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

PHAs may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the PHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60-day period is void, and the PHA may not pay any housing assistance payment to the owner.

OHA Policy

Workshops and orientations will be offered to all owners who have not previously participated in the HCV program. These sessions are **not** mandatory.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to OHA.

The owner and OHA will execute the HAP contract. OHA will not execute the HAP contract until the owner has submitted IRS form W-9. OHA will ensure that the owner receives a copy of the executed HAP contract.

OHA may provide a one time payment of up to $500 to new owners that have not been on the program within the last five years. Owners are eligible for only one payment.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of rent, the owner must notify the PHA of any changes in the amount of the rent to owner at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. OHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or give the family notice in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

OHA Policy

Where the owner is requesting a rent increase, OHA will determine whether the requested increase is reasonable within 15 business days of receiving a complete request from the owner. The owner will be notified of the determination in writing.
Rent increases will go into effect on the first of the month following the 60-days period after OHA's receipt of the owner's complete request of the rent change or the date specified by the owner, whichever is later.

CHAPTER 10

MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

INTRODUCTION

This chapter sets forth HUD regulations and OHA policies governing moves within or outside OHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under OHA's HCV program, whether the family moves to another unit within OHA's jurisdiction or to a unit outside OHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into OHA's jurisdiction. This part also covers the special responsibilities that OHA has under portability regulations and procedures.

PART I. MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD lists six regulatory conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice at the same time [24 CFR 982.314(d)(1)].

- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].

  OHA Policy

  If the family and the owner mutually agree to terminate the lease for the family's unit, the family must use OHA's form and also must provide OHA a copy of the mutual termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give the PHA a copy of any owner eviction notice [24 CFR 982.551(g)].

- The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.314(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the PHA, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.314(b)(4), 24 CFR 982.353(b)].

  OHA Policy

  If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault or stalking, the PHA will request documentation in accordance with Section 16-IX.D of this plan. The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the PHA will document the waiver in the family's file.

- The PHA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
- The PHA determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the PHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives notice to the owner. [24 CFR 982.403(a) and (c)]
- 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 for up to no more than 10% of the total units in the public housing and PBV portfolios. OHA will maintain an approved transfer waitlist for all residents in good standing.
  - Under MTW authority with approval from the Executive Director on a case-by-case basis, OHA may 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 eligible for the relevant program. OHA may also allow participants of local, non-traditional programs to transfer to the PBV program provided that the family has met the program guidelines specified in the local program. This policy is authorized under Attachment C, Section D.4. of the Amended and Restated Moving to Work Agreement.

10-I.B. RESTRICTIONS ON MOVES

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which a PHA may deny a family permission to move and two ways in which a PHA may restrict moves by a family.

Denial of Moves

HUD regulations permit a PHA to deny a family permission to move under the following conditions:

Insufficient Funding

A PHA may deny a family permission to move either within or outside the PHA's jurisdiction if the PHA does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)].

However, Notice PIH 2011-3 significantly restricts the ability of PHAs to deny permission to move due to insufficient funding and places further requirements on PHAs regarding moves denied due to lack of funding. The requirements found in this notice are mandatory. **See Section 10-II.B for additional MTW restrictions on moves outside of OHA's jurisdiction.**

OHA Policy

OHA will deny a family permission to move on grounds that it does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or OHA; (b) OHA can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) OHA can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs.

OHA may create a list of HCV families whose moves have been denied due to insufficient funding. When funds become available, the families on this list will take precedence over families on the waiting list. OHA will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list (see section 4-III.D). OHA will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.

A family assisted in a PBV program unit may request to move with continued assistance under the Housing Choice Voucher program after completing an initial 24-month PBV lease term. . A PBV transfer to HCV may be denied due to insufficient funding. If OHA denies a PBV program family request to move, it will inform the family that the denial is temporary until funds become available. OHA will place the family on a separate PBV program transfer waiting list (if open), based on the date and time of request.

For OHA Policy regarding the Project- Based Voucher (PBV) program, see -Section 17-VIII.C. Family Right to Move.

Grounds for Denial or Termination of Assistance

The PHA may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)].

OHA Policy

If OHA has grounds for denying or terminating a family's assistance, OHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

Restrictions on Elective Moves [24 CFR 982.314(c)]

HUD regulations permit the PHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the PHA to prohibit more than one elective move by a participant family during any 12-month period. However, such prohibitions, if adopted, do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault or stalking and the move is needed to protect the health or safety of the family or family member. (For the policy on documentation of abuse, see section 10-I.A.)

OHA Policy

OHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within OHA's jurisdiction or outside it under portability.

OHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in OHA's jurisdiction. Exceptions will be considered on a case by case basis for families that submit a valid Mutual Agreement signed by the owner.

OHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, dating violence, sexual assault or stalking, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, OHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

10-I.C. MOVING PROCESS

Notification

If a family wishes to move to a new unit, the family must notify the PHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside the PHA's jurisdiction under portability, the notice to the PHA must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2011-3]. The notices must be in writing [24 CFR 982.5].

Approval

OHA Policy

- Families must submit a written request for a transfer voucher to move from the unit.
- OHA will provide the family written instruction on the moving process.
- OHA will determine whether the move is approvable in accordance with the written instruction and regulations and policies set forth in sections 10-1.A and 10-1.B. If denied, OHA will notify the family in writing of its determination within 10 business days following receipt of the family's request.
- Families may not move from the unit without being issued a current transfer voucher.
- Families may not be issued a transfer voucher if there are delinquent on rent payment, regardless of written notice of agreement between the family and the owner.

A family may move to a new unit if the family or a member of the family, is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or if any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. However, any family member that has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit.

How Many Moves [24 CFR 982.554(c)]

A participant family may move with continued assistance under the program, either inside the PHA jurisdiction, or under the portability procedures (See section 10.II.B) in accordance with the PHA's policies.

(1) Consistent with applicable civil rights laws and regulations, the PHA may establish policies that:

(i) Prohibit any move by the family during the initial lease term;

(ii) Prohibit more than one move by the family during any one-year period; and

(iii) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5,

subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

Reexamination of Family Income and Composition

OHA Policy

- For families approved to move to a new unit within OHA's jurisdiction, OHA will conduct a review of income at the time of the request to move. An interim reexamination will be conducted according to Chapter 11 of this plan only if there is a change to the income or household composition.
- Should a participant provide any reportable changes which cannot be immediately verified, an interim reexamination of family income and household composition will be conducted. OHA will perform a new reexamination only when the requested move is within three (3) months of the next scheduled recertification date. For families moving into or families approved to move out of OHA's jurisdiction under portability, OHA will follow the policies set forth in Part II of this chapter.

Voucher Issuance and Briefing

OHA Policy

- For families approved to move to a new unit within OHA's jurisdiction, OHA will issue a new voucher within 10 business days after all required documents have been received necessary documents have been submitted by the family.
- For families approved to move to a new unit outside of OHA's jurisdiction, OHA will issue a new voucher with the portability package within 15 business days after all required documents have been received.
- A briefing may be required for some families.

Moves Involving Foreclosure

OHA Policy

- Families receiving the notice of foreclosure can request to move; however, it is not required.
- Upon receipt of notification of a property foreclosure, OHA will notify families by mail along with a transfer voucher request form and OHA policy on Moves Involving Foreclosure.
- Families that remain in a foreclosed property with a cancelled HAP contract will not receive continued subsidy after 120 days, which is the voucher term with extension. Families will be proposed for program termination.

Housing Assistance Payments [24 CFR 982.311(d)]

When a family moves out of an assisted unit, the PHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

OHA Policy

At the discretion of OHA, the HAP contract may provide for vacancy payments to the owner for an OHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by OHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Vacancy loss payments of up to two months HAP will be offered to existing HCV owners if they re-rent a unit previously occupied by an HCV tenant to another HCV participant within two months of contract cancellation.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

Zero HAP Families Who Wish to Move [24 CFR 982.455]

A participant who is not receiving any subsidy, but whose HAP contract is still in force, may request a voucher to move to a different unit. The PHA must issue a voucher to move unless it has grounds to deny assistance under the program regulations. However, if the PHA determines no subsidy would be paid at the new unit, the PHA may refuse to enter into a HAP contract on behalf of the family.

PHA Policy

If a zero HAP family requests to move to a new unit, the family may request a voucher to move. However, if no subsidy will be paid at the unit to which the family requests to move, the PHA will not enter into a HAP contract on behalf of the family for the new unit.

PART II: PORTABILITY

10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The first PHA is called the **initial PHA.** The second is called the **receiving PHA.**

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. OHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

10-II.B. INITIAL PHA ROLE

OHA Policy

Allowable Moves under Portability (MTW)
Under MTW authority, OHA will limit elective moves to jurisdictions within the nine Bay Area counties identified by the Association of Bay Area Governments: Alameda County, Contra Costa County, Marin County, Napa County, San Francisco County, San Mateo County, Santa Clara County, Solano County, and Sonoma County. An elective move due to VAWA violence/abuse will not be limited to the nine Bay Area counties listed above.

OHA anticipates that some households will need to move out of Oakland for special needs. This new portability policy will allow families to move their tenant based vouchers locally under limited circumstances such as:

- Reasonable accommodation for persons with a disability
- Verifiable employment opportunity more than 35 miles from the City of Oakland limits and at least 20 hours per week minimum wage applicable in the state
- Situations covered underneath the Violence Against Women Act (VAWA)
- Participants porting out for education for the head of household and or spouse only will need to show proof of full-time enrollment at a college or university
- Verifiable threat to the physical safety of the family
- OHA port-outs where the receiving Public Housing Authority (PHA) absorbs the voucher
- Port-outs for vouchers that OHA is administering (unabsorbed) due to those vouchers porting in from another PHA
- Declared natural disaster or state of emergency

Any exceptions to this policy will be reviewed by the Executive Director, or his designee, on a case-by-case basis.

If a move is approved, a family may move with voucher assistance only to an area where there is at least one PHA administering the voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside OHA's jurisdiction under portability. OHA, in accordance with HUD regulations and OHA policy, will determine whether a family qualifies.

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside OHA's jurisdiction under portability. However, HUD gives PHAs discretion to deny a portability move

by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance. OHA will notify the local HUD office in writing within 10 business days if it has to deny transfers to a higher-cost unit because of insufficient funding.

OHA Policy

OHA will determine whether an applicant family may move out of OHA's jurisdiction with continued assistance in accordance with the regulations and MTW policy set forth here and in sections 10-I.A and-10 II.B of this chapter. OHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

OHA Policy

If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in OHA's jurisdiction at the time the family submitted their initial application for assistance, or at the time of the applicant interview, the family must live in OHA's jurisdiction with voucher assistance for at least 24 months before requesting portability.

OHA will consider exceptions to this policy:

- For purposes of reasonable accommodation (see Chapter 2).
- For protecting victims of domestic violence, dating violence, sexual assault and stalking.
- Upon request by the Alameda County Children and Family Services department in Family Unification Program cases.

Any exception to this policy is also subject to the approval of the receiving PHA [24 CFR 982.353(c)(3)].

This policy does not apply for when the family or member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), and the move is needed to protect the health or safety of the family or family member, or any family member who has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move[24 CFR § 982.353 (c)(4)].

The Initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.353(b)]. The Violence against Women Act (VAWA) creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved in violation of the lease to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's move or request to move, if he or she remained in the unit. So long as the family has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the initial OHA and move to another jurisdiction under the Housing Choice Voucher Program [24 CFR 982.353(b)].

OHA Policy

OHA will determine whether a participant family may move out of OHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-II.B of this chapter. OHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

Determining Income Eligibility

Applicant Families

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2011-3].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c)(1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2011-3].

Participant Families

The income eligibility of a participant family is not redetermined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2), 24 CFR 982.355(c)(1)].

Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family.

OHA Policy

For a participant family approved to move out of its jurisdiction under portability, OHA generally will conduct a reexamination of family income and composition only if the family's next scheduled reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

OHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing

The regulations and policies on briefings set forth in Chapter 5 of this plan require OHA to provide information on portability to all applicant families that qualify to lease a unit outside OHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

OHA Policy

OHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5). OHA will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. OHA will advise the family that they will be under the Receiving Housing Authority's (RHA) policies and procedures, including subsidy standards and voucher extension policies.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, OHA will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

OHA Policy

For families approved to move under portability, OHA will issue a new voucher within 15 business days of receipt of all necessary documents by the family. The initial term of the voucher will be 90 days.

Voucher Extensions and Expiration

OHA Policy

OHA will approve **no** extensions to a voucher issued to an applicant or participant family porting out of OHA's jurisdiction unless the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under OHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of OHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

Preapproval Contact with the Receiving PHA

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via e-mail or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether it will approve or deny the move [Notice PIH 2011-3].

OHA Policy

OHA will use e-mail, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

Initial Notification to the Receiving PHA

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c)(2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2011-3]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(2)].

OHA Policy

Because the portability process is time-sensitive, OHA will notify the receiving PHA by phone, fax, or e-mail to expect the family. OHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, email and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. OHA will pass this information along to the family. OHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

Sending Documentation to the Receiving PHA

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2011-3]
- A copy of the family's voucher [Notice PIH 2011-3]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2011-3]
- Copies of the income verifications backing up the form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2011-3]

OHA Policy

In addition to these documents, OHA will provide the following information, if available, to the receiving PHA:

-Social security numbers (SSNs)
-Documentation of legal identity
-Documentation of citizenship or eligible immigration status
-Documentation of participation in the earned income disallowance (EID) benefit
-Documentation of participation in a family self-sufficiency (FSS) program
-A copy of the family's current EIV data

Initial Billing Deadline [Notice PIH 2011-3]

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

OHA Policy

If OHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the receiving PHA reports that the family is not yet under HAP contract, OHA will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. OHA will send the receiving PHA a written confirmation of its decision by mail.

OHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2011-3]

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of overleasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

Annual Updates of Form HUD-50058

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's next scheduled reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

Denial or Termination of Assistance [24 CFR 982.355(c)(9)]

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For OHA policies on denial and termination, see Chapters 3 and 12, respectively.)

10-II.C. RECEIVING PHA ROLE

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

Responding to Initial PHA's Request

The receiving PHA must respond via e-mail or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed. If the receiving PHA informs the initial PHA that it will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date [Notice PIH 2011-3].

OHA Policy

The PHA will use e-mail, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

Initial Contact with Family

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2011-3].

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2011-3]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2011-3].

OHA Policy

OHA will require the family to attend a briefing. OHA will provide the family with a briefing packet (as described in Chapter 5) and, will orally inform the family about OHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

Income Reexamination Criminal Background Screening

HUD allows the receiving PHA to conduct its own income reexamination and criminal background screening of a portable family [24 CFR 982.355(c)(4) and PIH 2012-42]. However, the receiving PHA may not delay voucher issuance or unit approval until the reexamination and/or criminal background screening process is complete unless the reexamination and/or criminal background screening is necessary to determine that an applicant family is eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2011-3, 24 CFR 982.201(b)(4)]. The receiving PHA does not redetermine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(1)].

OHA Policy

For any family moving into its jurisdiction under portability, OHA will not conduct a new reexamination of family income and composition unless the family is an applicant and OHA cannot otherwise confirm that the family is income eligible for admission to the program.

In conducting its own reexamination, OHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

OHA may conduct its own criminal background screening on a family that has already received housing assistance payments under the initial PHA.

Voucher Issuance

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c)(6)].

Timing of Voucher Issuance

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2011-3].

OHA Policy

When a family ports into its jurisdiction, OHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with OHA's procedures. OHA will update the family's information when verification has been completed.

Voucher Term

The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c)(6), Notice PIH 2016-09].

OHA Policy

For vouchers issued to incoming portables, OHA's term will expire 30 days after the initial PHA's voucher term.

Voucher Extensions [24 CFR 982.355(c)(6), Notice 2011-3]

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

The receiving PHA must issue a voucher to the ported family that does not expire before 30 calendar days from the expiration date of the initial PHA's voucher.

OHA Policy

OHA generally will not extend the term of the voucher that it issues to an incoming portable family unless OHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E. Incoming portable families wishing to extend their voucher term will be referred to their initial PHA.

OHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Notifying the Initial PHA

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2011-3]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher").

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction. [Notice PIH 2011-3]

Administering a Portable Family's Voucher

Initial Billing Deadline

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA **executes** a HAP contract on behalf of the family **and** (b) in time that the notice will be **received** no later than 60 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2011-3]. A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

OHA Policy

OHA will send its initial billing notice by fax or e-mail, if necessary to meet the billing deadline, and will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is overleased) [Notice PIH 2011-3].

Ongoing Notification Responsibilities [Notice PIH 2011-3, HUD-52665 as amended by MTW]

Annual Reexamination. Normally, the receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each scheduled reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

Change in Billing Amount. The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

Late Payments [Notice PIH 2011-3]

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

Overpayments [Notice PIH 2011-3]

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2011-3.

Denial or Termination of Assistance

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement. [Notice PIH 2011-3]

OHA Policy

If OHA elects to deny or terminate assistance for a portable family, OHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. OHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. OHA will furnish the initial PHA with a copy of the review or hearing decision.

Absorbing a Portable Family

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that (a) the PHA has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in overleasing [24 CFR 982.355(d)(1), Notice PIH 2011-3].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family. [Notice PIH 2011-3]

OHA Policy

If OHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, OHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If OHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

Chapter 11

REEXAMINATIONS

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 982.516 and 982 Subpart E, 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 Section 8 rules and regulations apply.

INTRODUCTION

PHAs are required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. As a participant in the MTW program, OHA has altered this requirement for wage earning households and for elderly and disabled families on fixed incomes. These families will have their income reexamined every two or three years, depending on the source of income, as opposed to every year. Interim reexaminations are also needed in certain situations. This chapter discusses both regularly scheduled and interim reexaminations, and the recalculation of family share and subsidy that occurs. HUD regulations and OHA policies concerning reexaminations are presented in three parts:

Part I: Annual, Biennial, and Triennial Reexaminations. This part discusses the process for scheduling and conducting biennial reexaminations for households with income from wages, and triennial reexaminations for elderly and disabled families on fixed incomes and annual reexaminations for all other families. This part also discusses the reexamination effective dates and information to be collected, verified.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between regularly scheduled reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of the regularly scheduled and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to regularly scheduled and interim reexaminations.

PART I: ANNUAL, BIENNIAL, & TRIENNIAL REEXAMINATIONS [24 CFR 982.516; OHA MTW Annual Plan Activity #14-01]

11-I.A. OVERVIEW

OHA must conduct a reexamination of family income and composition regularly for all families. Reexaminations of household income occur annually for households reporting no income, no income from wages, income from temporary, non-wage sources, or mixed income from fixed sources. Households enrolled in Special Programs are also subject to annual reexaminations. Households with any income from wages will complete a reexamination at least once every two years (biennial). OHA will conduct a reexamination once every three years (triennial) for all elderly and disabled families on fixed incomes . All reexaminations include gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated.

11-I.B. SCHEDULING ANNUAL, BIENNIAL & TRIENNIAL REEXAMINATIONS

OHA must establish a policy to ensure that the reexamination for each family is completed *within* either a 12-month period for non-wage earning families or families enrolled in special programs, a 24-month period for qualifying, wage earning families, or a 36-month period for those elderly and disabled families on fixed incomes that qualify for triennial recertification.

OHA Policy

OHA will begin the reexamination process 120 days in advance of its scheduled reexamination effective date. Generally, OHA will schedule reexamination effective dates to coincide with the HAP contract anniversary date.

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 the information needed to conduct reexaminations. How that information will be collected is left to the discretion of each individual PHA. PHAs may give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

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 may be required to participate in a regularly scheduled reexamination interview, which must be attended by the head of household, spouse, or cohead. 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 the scheduled reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview along with a packet of required forms the family must complete and bring to the interview. In addition, the notice will inform the family of the information and supporting documentation that must be brought to the interview.

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, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and OHA must execute a certification attesting to the role and assistance of any such third party.

11-I.C. CONDUCTING REGULARLY SCHEDULED REEXAMINATIONS

As part of the regularly scheduled reexamination process, families are required to provide updated information to the PHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

OHA Policy

Families will be asked to bring the completed reexamination forms and information requested in the reexamination packet they received from OHA 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.

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 reexamination. These changes include but are not limited to household composition, all household income, unless the family is on a biennial schedule 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 sent a notice of termination (See Chapter 12).

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, the PHA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state. The PHA will use a certified criminal search vendor.

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 12.)

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. As part of its ongoing quality control audit process, OHA may request these forms if a audit determines that the file copies are missing or incomplete. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), OHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, OHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]

Section 327 of Public Law 109-115 established new restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education. If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

OHA Policy

During the reexamination process, OHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), the PHA will process a reexamination in accordance with the policies in this chapter.

11-I.E. CALCULATING ANNUAL INCOME AT ANNUAL REEXAMINATION [24 CFR 5.609(c)(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 11-1 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 another agency's determination of income or OHA has other reason to use third-party verification in these circumstances, then the above will apply.

11-I.F. EFFECTIVE DATES

PHAs must establish policies concerning the effective date of changes that result from a reexamination [24 CFR 982.516].

OHA Policy

In general, an *increase* in the family share of the rent that results from a regularly scheduled reexamination will take effect on the HAP contract 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 a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If OHA chooses to schedule a 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 regularly scheduled reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the regularly scheduled reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from a reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If OHA chooses to schedule a 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 regularly scheduled reexamination, d*ecreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by OHA by the date specified, and this delay prevents OHA from completing the reexamination as scheduled.

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516; Notice PIH 2023-27]

11-II.A. OVERVIEW

Family circumstances may change throughout the period between scheduled reexaminations. HUD and PHA policies dictate the changes in family circumstances that must be reported, the required documentation, and under what circumstances the PHA must process interim reexaminations to reflect those changes.

A family may request an interim determination of family income or composition because of any changes since the last determination. 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.

11-II.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)].

OHA Policy

All families must report all changes in family and household composition that occur between annual reexaminations within 10 business days of the change.

OHA may conduct interim reexaminations to account for any changes in family and household composition that occur between regularly scheduled reexaminations.

New Family Members Not Requiring Approval

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 982.551(h)(2)].

New Family and Household Members Requiring Approval

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the PHA must make appropriate adjustments in the family share of the rent and the HAP payment at the effective date [24 CFR 982.516(e)(2)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

OHA Policy

The family does not have a right for an informal hearing if OHA does not approve the addition of a family or household member.

In cases where the addition would increase the existing subsidy size, the additional member can only be a minor, a person with a disability or elderly adult.

Families must request OHA and Owner approval to add new members including but not limited to: live-in aide, foster child, or foster adult. OHA will only approve the addition of a foster child or foster adult if it will not cause a violation of HQS standards. Requests must be made in writing and approved by OHA and Owner prior to the individual moving into the unit. If the Owner disapproves the family's request to add a new member, the family can request a transfer voucher to move.

In the case of a minor, OHA will only approve a minor who has joined the family due to court-awarded guardianship, custody, placement by a social service agency, or by an informal custody arrangement between parents who share custody. In cases of informal custody arrangements between parents that share custody, a notarized statement by both parents listed on the minor's birth certificate approving the placement of the minor in the subsidized unit must be provided. Minors subject to a joint custody arrangement must live with the assisted family at least 50 percent or more of the time.

OHA will not approve the addition of a new family or household member unless the individual meets OHA's eligibility criteria as defined in Chapter 3 and documentation requirements (see Chapter 7, Part II). If it is determined that an individual does not meet the criteria, OHA will notify the family in writing if its decision to deny approval of the family or household member and the reasons for the denial.

If OHA determines an individual meets OHA's eligibility criteria as defined in Chapter 3, OHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued another voucher and will be required to move.

OHA will make its determination of approval or denial and notify the family in writing within 10 business days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

Families must promptly notify OHA if any family member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], OHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

OHA Policy

The family must inform OHA within 10 business days. if a household member ceases to reside in the unit, This requirement also applies to a family member who has been considered temporarily absent and are now permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform OHA within 10 business days.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Overview

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 982.516(c)(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 982.516(c)(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 14.

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, staff 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.

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 982.516(d)].

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.

Asset Limitation [Notice PIH 2023-27]

Under the Section 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA), beginning July 1, 2025 OHA may initiate termination of family assistance no later than six months after the effective date of an interim reexamination for the following:

1. Net family assets that exceed $100,000 (adjusted annually for inflation); and/or
2. The family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell the real property (based on laws of the state or locality in which the property is located) that is suitable for occupancy by the family as a residence.

OHA Policy

OHA may enforce the asset limitation policy for all families at reexaminations. OHA will determine enforcement annually in the MTW Annual Plan.

If OHA chooses to enforce the asset limitation, OHA may utilize the approved MTW Activity #25-01, which authorizes OHA to increase the asset limit from $100,000 to $250,000 for existing participants. Additionally, OHA may extend the timeframe for termination of households with excess assets from 6 months after the effective date of a family's interim reexamination to 12 months after the effective date of a family's interim reexamination. Families will be allowed to cure noncompliance with the asset limitation during this period or prepare to graduate from assistance.

OHA will not evict families that are elderly or disabled, as well as families that are in housing and receiving supportive services, based solely on this asset limitation policy.

11-II.D. EFFECTIVE DATES [24 CFR 982.516(e) and Notice 2023-27]

Changes Reported Timely [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 [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. OHA 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 OHA 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.

OHA will also clearly communicate the effect of the retroactive adjustment to the owner.

PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

11-III.A. OVERVIEW

After gathering and verifying required information for a scheduled reexamination or interim reexamination, the PHA must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. 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.

11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the PHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

Payment Standards [24 CFR 982.505 as amended by MTW]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When OHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If OHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
    - If the payment standard amount has i*ncreased,* the increased payment standard will be applied at the *first* reexamination following the effective date of the increase in the payment standard, or during the processing of an approved contract rent increase.
    - If the payment standard amount has *decreased*, the decreased payment standard will be applied at the *first* regular reexamination following the effective date of the decrease in the payment standard, provided that at least 90 days' notice can be provided to the family. If 90 days' notice cannot be provided, then the increase will be applied at the *second regular* reexamination following the effective date of the decrease in the payment standard.
    - If there are no changes to the family's unit size, OHA will continue to use the higher payment standard, as long as the family unit size remains the same, for the family's subsidy calculations for as long as the family continues to receive voucher assistance in that unit. If the payment standard is decreased due to changes in the family's situation, the higher payment standard will no longer be applicable for the family.
- Reasonable Accommodation
    - If the payment standard amount has i*ncreased* as a result of a reasonable accommodation, the increased payment standard will be applied at the effective date of the reasonable accommodation.

- If the payment standard amount has *decreased* as a result of a reasonable accommodation that is no longer applicable, the *decreased* payment standard will be applied only after the family has received 30 days notice.

If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

Subsidy Standards [24 CFR 982.505(c)(4)]
If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the PHA's subsidy standards (see Chapter 5 for Housing Choice Voucher program Subsidy Standards. See Chapter 17 Subsidy Standards applicable to the Project Based Voucher program), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size.

Utility Allowances [24 CFR 982.517(d)]
The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the PHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.
When there are changes in the utility arrangement with the owner, OHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.
At reexamination, OHA must use the current utility allowance schedule [24 CFR 982.517(d)(2)].

OHA Policy
Revised utility allowances may be applied to a family's rent and subsidy calculations at the first reexamination after the allowance is adopted.
For families on a biennial/triennial reexamination schedule, revised utility allowances may be applied on the earlier of the first anniversary date or first reexamination date following the adoption of the revised utility allowances.

COLAs (MTW)
With certain limited exceptions, OHA will not conduct an annual reexamination for elderly and disabled families on fixed incomes, and unless determined otherwise by the Executive Director, OHA will not apply any COLAs (either positive or negative) that affect the income of families in these groups to recalculate family share and subsidy. This adjustment will be effective annually on the HAP contract anniversary. OHA will calculate an annual COLA adjustment for all eligible households participating in the approved MTW Rent Reform Pilot (Activity #13-01).

11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

The PHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

The amount and effective date of the new HAP payment

The amount and effective date of the new family share of the rent

The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the PHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

OHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

11-III.D. DISCREPANCIES

During an annual, triennial 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 subsidy are discovered, corrections will be made in accordance with the policies in Chapter 14.

PART IV: 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 to HUD 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 11-1 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 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 – pending HUD approval 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 applied to household's related income subsidy (once per year at interim recertification)
Hardship Policy	Households can request a review, at any time, of the PHA'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 11-2: CALCULATING Income AT ANNUAL REEXAMINATION

Example 1: Calculating Annual Income at Annual Reexamination Using EIV

Staff are processing the 3/1/2024 annual reexamination for Ruby Myers and her minor daughter, Georgia. No interim reexaminations have been processed, and Ruby has not reported any changes to annual income to the PHA since the 3/1/2023 annual reexamination. The SSA published 2024 COLA is 7 percent.
Last reexamination – 3/1/2023 Annual Reexamination

Ruby:	Georgia:
Wages: $30,000	SSI: $10,980 ($915 monthly)s

The EIV report pulled on 12/15/2023

Ruby:	Georgia:
Wages Total: $33,651	SSI Total: $10,980
Quarter 3 of 2023: $8,859 (City Public School)	2023 benefit $915 monthly
Quarter 2 of 2023: $8,616 (City Public School)	
Quarter 1 of 2023: $8,823 (City Public School)	
Quarter 4 of 2022: $7,353 (City Public School)	

<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

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)	Wages: $6,000
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)	

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 12

TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a PHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, and termination by OHA based on the family's behavior.

Part II: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that OHA may consider in lieu of termination, the criteria OHA must use when deciding what action to take, and the steps OHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

12-I.A. OVERVIEW

HUD requires PHAs to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits PHAs to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying their PHA.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of PHA subsidy goes down. If the amount of HCV assistance provided by the PHA drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

OHA Policy

Under MTW authority, if the amount of HCV assistance provided by OHA drops to zero and remains at zero for 24 consecutive months the family's assistance terminates automatically. When the family's assistance drops to zero OHA will notify the family in writing of the automatic termination effective date. Families may not be required to participate in the regular reexamination process during the 24 month period. If during the 24 month period the family experiences a change in circumstances that would result in the increase of assistance, the family must notify OHA of the change in circumstances and request an interim reexamination before the expiration of the 24 month period.

12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the PHA terminate the family's assistance at any time.

OHA Policy

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or cohead.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires PHAs to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]

PHAs must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. As discussed further in Section 12-II.E., incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence sexual assault or stalking.

OHA Policy

A family may be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary and/or the family enters into a court stipulated agreement or court settlement agreement. This will be determined on a case-by-case basis.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. In such cases, OHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C. In making its decision, OHA will consider the factors described in Sections 12-II.D and Sections 12-II.E. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests.

Failure to Provide Consent [24 CFR 982.552(b)(3)]

PHAs must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Chapter 7 for a complete discussion of consent requirements.

Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]

PHAs must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

Failure to Provide Social Security Documentation [24 CFR 5.218(c) and PIH 2012-10

PHAs must terminate assistance if a participant family fails to provide the documentation or certification required for any family member who obtains a social security number, joins the family. See Chaper 7.II.B.

Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]

PHAs must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, and is not residing with his/her parents in an HCV assisted household, the PHA must the terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and PHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

Lifetime Registered Sex Offenders [Notice PIH 2012-28]

Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA must immediately terminate assistance for the household member. In this situation, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household. If a member that committed an offense prior to June 25, 2001 commits a subsequent offense while on the program, the member will be subject to termination. Regulations for hearings as described in Chapter 16 still apply.

Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]

The PHA must immediately terminate program assistance for deceased single member households.**12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**

Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]

HUD requires PHAs to establish policies that permit the PHA to terminate assistance if the PHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

Use of Illegal Drugs and Alcohol Abuse

OHA Policy

OHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

OHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.
Currently engaged in is defined as 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, or eviction of household members related to the use of illegal drugs or 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 assistance, OHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate assistance.

Drug-Related and Violent Criminal Activity **[24 CFR 5.100]**
Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.
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.

OHA Policy

OHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

OHA will consider all credible evidence, including but not limited to, any record of convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent 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 assistance, OHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance
[24 CFR 982.552(c), 24 CFR 5.2005(c)]
HUD permits the PHA to terminate assistance under a number of other circumstances. It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in Section 12.II.E., the Violence against Women Act of 2013 explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault or stalking as reasons for terminating the assistance of a victim of such abuse.

OHA Policy

OHA **may** terminate a family's assistance if:
For any admissions and members added to the household after June 25, 2001 (the effective date of the Screening and Eviction for Drug Abuse and Other Criminal Activity final rule) if the reexamination screening reveals that the participant or a member of the participant's household is subject to a lifetime sex offender registration requirement, or that the participant has falsified information or otherwise failed to disclose his or her criminal history on their reexamination forms then OHA will pursue termination of tenancy to the extent allowed by their lease and state or local law. If a member that committed an offense prior to June 25, 2001 commits a subsequent offense while on the program, the member will be subject to termination.

Note: The requirements for prohibition of admission to applicants subject to a lifetime sex offender registration requirement and obtaining background checks can be found at 24 CFR Part 5, Subpart I Preventing Crime in Federally Assisted Housing Denying Admission and Terminating Tenancy for Criminal Activity and Alcohol Abuse; Subpart J Access to Criminal Records and Information; and in HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs.*

The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related OHA policies.

Any family member has misrepresented any information to OHA and/or any other government agency that is related to eligibility, preferences, housing history, allowances, income, family composition, identity documents, social security numbers and/or criminal history.

Any family member has been evicted from federally-assisted housing in the last five years.

Any PHA has ever terminated assistance under the program for any member of the family.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

The family currently owes rent or other amounts to any PHA in connection with the HCV, Project-based Voucher, Moderate Rehabilitation or public housing programs.

The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

The family has breached the terms of a repayment agreement entered into with the PHA.

A family member has engaged in or threatened violent or abusive behavior toward OHA personnel.
Abusive or violent behavior towards OHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

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

If the family or household member has been engaged in violent criminal activity as described in § 982.551.

Any household member is currently engaged in any illegal use of a drug; or

a pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents 982.553.

A household member engaged in criminal activity regardless of whether the household member has been arrested or convicted for such activity. 982.553 (c)
In making its decision to terminate assistance, OHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D and 12-II.E.

Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate assistance.

Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. Each PHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days with the exceptions as noted in 3-I.L. Absence in this context means that no member of the family is residing in the unit.

OHA Policy

If the family is absent from the unit for more than 60 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F.

Insufficient Funding [24 CFR 982.454]

A PHA may terminate HAP contracts if the PHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

OHA Policy

OHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If OHA determines there is a shortage of funding, prior to terminating any HAP contracts, OHA will determine if any other actions can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the PHA will terminate HAP contracts as a last resort. Prior to terminating any HAP contracts, OHA will inform the local HUD field office. OHA will terminate the minimum number needed in order to reduce HAP costs to a level within the PHA's annual budget authority.

If OHA must terminate HAP contracts due to insufficient funding, OHA will do so in accordance with the following criteria and instructions:

OHA will first terminate tenant-based assistance to families that are receiving less than $100 in monthly Housing Assistance Payments. OHA will next terminate tenant-based assistance to families that are receiving less than $200 in monthly Housing Assistance Payments. OHA will finally terminate tenant-based assistance to families that have been on the Section 8 program the longest, with the exception that contracts for elderly and disabled families will not be cancelled unless there are no non-elderly families on OHA's tenant-based HCV program. Families living in project-based voucher developments under long term HAP contracts commitments will be terminated as a very last resort.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

PHAs are required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give PHAs the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions OHA may choose to take when it has discretion, and outlines the criteria OHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

The way in which a PHA terminates assistance depends upon individual circumstances. HUD permits PHA to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition

As a condition of continued assistance, a PHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

OHA Policy

As a condition of continued assistance, the culpable household member will be terminated from the program and removed from the lease and voucher.

As a condition of continued assistance, 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 head of household must present evidence of the former household member's current address as required by OHA by the designated deadline. If the head of household does not adhere to the terms of this alternative, the family's program assistance will be terminated.

Repayment of Family Debts

OHA Policy

If a family owes amounts up to $10,000 to OHA, as a condition of continued assistance, OHA will require the family to repay the full amount within 30 days of receiving notice from OHA of the amount owed or to enter into a repayment agreement.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, OHA will terminate the assistance upon notification to the family and pursue other modes of recovery.

Neighborhood Orientation Workshop (MTW)

The Neighborhood Orientation Workshop is an MTW initiative which is intended to provide Section 8 Program participants with information and access to training if needed to become successful tenants and responsible, engaged members of their community. OHA will utilize a third party contractor to conduct the workshops. The third party contractor will be selected based on their knowledge of the local market area and their expertise in marketing, outreach, communication, popular education, and other successful strategies for working with low-income households and individuals.

OHA Policy

As a condition of continued assistance, a participant family may be required to attend a Neighborhood Orientation Workshop. This requirement may be imposed as a part of an OHA Warning Meeting (Section 16-III.C. – Warning Meetings), convened in response to a complaint of alleged behavior related to violations of participant family obligations or lease agreement. The Head of Household and any other responsible adult family members in the household may be required to attend a Neighborhood Orientation Workshop as a condition of continued assistance. Upon completion, attendees will be required to submit a copy of their certificate of completion to OHA.

12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

Evidence

For criminal activity, HUD permits PHAs to terminate assistance 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 [24 CFR 982.553(c)].

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 982.552(c)(2)(i)]

PHAs are permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

OHA Policy

OHA will consider the following facts and circumstances when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents' safety or peaceful enjoyment of the property

The effects that termination of assistance 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 12-II.E) 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

An arrest may trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the PHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA 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 peaceful and quiet enjoyment of the property.

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 participant 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.
In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]

If the family includes a person with disabilities, a PHA's decision to terminate the family's assistance 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 assistance, 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 termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.

12-II.E. 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 of 2013 (VAWA) provides for victims of domestic violence, dating violence, sexual assault and stalking. For general VAWA requirements and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-IX of this plan, where definitions of key VAWA terms are also located. For any VAWA questions or complaints, please contact the:

Fair Housing Specialist, Melissa Benik,
(510)874-1546
reasonableaccomodationvmb@oakha.org.

VAWA Protections against Termination

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault or stalking. (*Note:* The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program. So do the limitations discussed under the next heading.)

First, VAWA provides that a PHA **may not terminate assistance to a family that moves out of an assisted unit in violation of the lease**, with or without prior notification to the PHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.314(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking **may not be construed either as a serious or repeated lease violation** by the victim or as good cause to terminate the assistance of the victim [24 CFR 5.2005(c)(1)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault or stalking **may not be construed as cause for terminating the assistance** of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, sexual assault or stalking [24 CFR 5.2005(c)(2)].

Fourth, it gives PHAs the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]

VAWA does not limit the authority of a PHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault or stalking so long as the PHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

Likewise, VAWA does not limit the authority of a PHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault or stalking if the PHA 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)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [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, the PHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, 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 the PHA'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 or stalking claims protection under VAWA, OHA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.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. In such cases OHA will document the waiver in the individual's file.

Terminating the Assistance of a Domestic Violence Perpetrator

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives the PHA the explicit authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others" without terminating assistance to "or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant" [24 CFR 5.2009(a)]. This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance. This means that the PHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

OHA Policy

OHA will terminate assistance to 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 HUD-5383) or other documentation of abuse submitted to OHA by the victim in accordance with this section and section 16-IX.D. OHA will also consider the factors in section 12-II.D. 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 terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

12-II.F. TERMINATION NOTICE [HCV GB, p. 15-7]

HUD regulations require PHAs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family's HAP contract and lease will also terminate when the family's assistance terminates [form HUD-52641], it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily.

OHA Policy

Whenever a family's assistance will be terminated, the PHA will send a written notice of termination to the family and to the owner. The PHA will also send a form HUD-5382 to the family with the termination notice. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other PHA policies, or the circumstances surrounding the termination require. When the PHA notifies an owner that a family's assistance will be terminated, the PHA will, if appropriate, advise the owner of his/her right to offer the family a separate, unassisted lease.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the PHA sends to the family must meet the additional HUD and PHA notice requirements discussed in section 16-III.C of this plan. VAWA 2013 expands notification requirements to require PHAs to provide notice of VAWA rights and the HUD 5382 form when a PHA terminates a household's housing benefit.

OHA Policy

Whenever the PHA decides to terminate a family's assistance because of the family's action or failure to act, the PHA will include in its termination notice the VAWA information described in section 16-IX.C of this plan and a form HUD-5382. VAWA survivors may claim their protections under VAWA at any time during the termination process.

Still other notice requirements apply in two situations:

If a criminal record is the basis of a family's termination, a copy of the record must accompany (or precede) the termination notice, and a copy of the record must also be provided to the subject of the record [24 CFR 982.553(d)].

If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.

PART III: TERMINATION OF TENANCY BY THE OWNER

12-III.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; OHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy, and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking and the victim is protected from eviction by the Violence against Women Act of 2013 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the PHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Violation of Federal, State, or Local Law

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

Criminal Activity or Alcohol Abuse

The owner may terminate tenancy during the term of the lease, except as provided by 12-II.E, if any *covered person*, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault or stalking, if the tenant or affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12-II.E).
The owner may terminate tenancy during the term of the lease, except as provided by 12-II.E, if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease, except as provided by 12-II.E, if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Evidence of Criminal Activity

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction,

Other Good Cause

During the initial lease term, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, "other good cause" for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent)

Please note: HUD regulations for lease termination do not preempt local law. This means you must comply with Oakland's Measure EE Just Cause for Eviction Ordinance in order to terminate the lease with your Section 8 tenant.

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

Note that "other good cause" does **not** include vacating a property that has been foreclosed upon during the lease term prior to the sale of that property. However, the new owner of the property may terminate the tenancy effective on the date of transfer of the unit if the owner will occupy

the unit as a primary residence and has provided the tenant a notice to vacate at least 90 days before the effective date of such notice [Notice PIH 2010-49]. Further information on the protections afforded to tenants in the event of foreclosure can be found in Section 13-II.G.

Protecting Tenants at Foreclosure [Notice PIH 2010-49]

In the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner,

(i) will occupy the unit as a primary residence; and

(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.

See Chapter 13.II.G**12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]**

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the PHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the PHA a copy of any eviction notice (see Chapter 5).

OHA Policy

If the eviction action is finalized in court, the owner must provide OHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 10 business days following the court-ordered eviction.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action;
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family 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.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.
An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault or stalking is limited by the Violence against Women Act of 2013 (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L. (See section 12-II.E.)

12-III.E. EFFECT OF TERMINATION OF TENANCY ON THE FAMILY'S ASSISTANCE

If a termination is not due to a serious or repeated violation of the lease, and if OHA has no other grounds for termination of assistance, OHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS

Following is a listing of a participant family's obligations under the HCV program:

- The family must supply any information that OHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by OHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.
- The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

  OHA Policy

  OHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

  Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criteriion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. 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)].
- The family must notify OHA and the owner before moving out of the unit or terminating the lease.

  OHA Policy

  The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to OHA at the same time the owner is notified.
- The family must promptly give OHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

- The composition of the assisted family residing in the unit must be approved by OHA. The family must promptly notify OHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request OHA approval to add any other family member as an occupant of the unit.

  OHA Policy

  The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. OHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify OHA in writing if any family member no longer lives in the unit.

- If OHA has given approval, a foster child or a live-in aide may reside in the unit. OHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when OHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).

- The family must not sublease the unit, assign the lease, or transfer the unit.

  OHA Policy

  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.

- The family must supply any information requested by OHA to verify that the family is living in the unit or information related to family absence from the unit.

- The family must promptly notify OHA when the family is absent from the unit.

  OHA Policy

  Notice is required under this provision only 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. Written notice must be provided to OHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].

- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).

- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).

- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and OHA policies related to drug-related and violent criminal activity. See Chapter 3.III.C.

- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the

immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and OHA policies related to alcohol abuse.

- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless OHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

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CHAPTER 13

OWNERS

INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term "owner" refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term "owner" includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in OHA's HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between OHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including OHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

PART I. OWNERS IN THE HCV PROGRAM

13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

Recruitment

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the PHA's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the PHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the PHA's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

OHA Policy

OHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. OHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- Holding frequent owner workshops and recruitment/information meetings
- Participating in community based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners and real estate brokers associations

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

Retention

In addition to recruiting owners to participate in the HCV program, PHAs must also provide the kind of customer service that will encourage participating owners to remain active in the program.

OHA Policy

All OHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

OHA will provide owners with a handbook that explains the program, including HUD and OHA policies and procedures, in easy-to-understand language.

Additionally, OHA will give special attention to helping new owners succeed through activities such as:

Formation of a **Landlord Advisory Council** to obtain direct input from participating HCV landlord on improving program administration and efficiency.

Providing an information sheet about inspections and other resource materials about HUD housing quality standards.

Providing other written information about how the program operates, including answers to frequently asked questions.

Providing an owner services team dedicated to assist owners with the move in process.

Publishing a quarterly informational news letter..

Offering monthly owner briefings and topic specific educational workshops for HCV participant landlords.

Offer oral interpretation and key documents translated from English into Cantonese, Spanish and Vietnamese.

Additional services may be undertaken on an as-needed basis, and as resources permit.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires PHAs to aid families in their housing search by providing the family with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the PHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the PHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

OHA Policy

Owners that wish lease a unit to an eligible HCV family may contact OHA and list a rental unit on ***OHA's Available Unit Listings***. OHA maintains a listing of available rental units with owner contact information in collaboration with GoSection8.com. There is no charge to owner or family for the service. An owner may update, add or remove their listing online at www.GoSection8.com., and HCV families may register for a GoSection8 Quick Match rental notification service also available through the website. The listings are updated weekly and provided to new HCV families as part of the informational briefing packet. OHA also has the listing available for pick up in the lobbies of its buildings that house Section 8 staff.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. A PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the PHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The PHA will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

PHAs must determine that the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, the PHA must determine that the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are required to use a standard lease used for renting to an unassisted family when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

PHAs enter into a formal contractual relationship with owners by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this chapter 13.

13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the PHA information required under the HAP contract
- Collecting from the family any security deposit, the tenant’s contribution to rent (that part of rent to owner not covered by the housing assistance payment from the PHA), and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services (unless paid by the family under the lease)
- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence against Women Reauthorization Act of 2013 (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family (see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); and 24 CFR 982.452(b)(1))

13-I.D. OWNER QUALIFICATIONS

A PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where a PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

Owners Barred from Participation [24 CFR 982.306(a) and (b)]

A PHA must not approve the assisted tenancy if the PHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the PHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

OHA Policy

Right to Limit or Restrict Owner Participation.

Owners who demonstrate a chronic inability to bring units up to HQS within prescribed time frames, i.e., repeated instances of rent abatement may be subject to restrictions or limited participation in OHA's Section 8 Housing Choice Voucher program. Example, an owner with three (3) abated contracts within a year may not be allowed to add additional contracts to the program until a pattern is established that HQS can be achieved without rent abatement activity. (See Section 8.II.C. - Risk Based Inspections)

Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]

A PHA must not approve an RTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The PHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]

A PHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the PHA (except a participant commissioner)
- Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The PHA must submit a waiver request to the appropriate HUD Field Office for determination.
Any waiver request submitted by the PHA must include [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the PHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by the PHA or assistance under the HCV program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of the PHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the PHA has requested a conflict of interest waiver, the PHA may not execute the HAP contract until HUD has made a decision on the waiver request.

OHA Policy

In considering whether to request a conflict of interest waiver from HUD, OHA will consider factors the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]

HUD regulations permit a PHA, at the PHA's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If a PHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

OHA Policy

OHA will refuse to approve a request for tenancy if OHA becomes aware that any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner has engaged in any drug-related criminal activity or any violent criminal activity;
- The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;
- The owner has a history or practice of renting units that fail to meet state or local housing codes; or
- The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, OHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, OHA may, on a case-by-case basis, choose to approve an owner.

Legal Ownership of Unit

OHA Policy

OHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., grant deed, management agreement, LLP documentation etc.).

13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with OHA.

The owner must cooperate with OHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with OHA.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

PART II. HAP CONTRACTS

13-II.A. OVERVIEW

The HAP contract represents a written agreement between a PHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the PHA's obligations. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See chapter 15 for a discussion of any special housing types included in OHA's HCV program.

If OHA has given approval for the family of the assisted tenancy, the owner and OHA execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13-II.B. HAP CONTRACT CONTENTS

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic **contract information** about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of PHA and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. OHA policy on the amount of security deposit an owner may collect is found in chapter 9.

In addition, PHAs have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

OHA Policy

OHA will presume that the owner will receive the housing assistance payment upon mailing unless the payment is returned to OHA. If an owner has not received the housing assistance payment after 10 working days, the owner may certify this to OHA. OHA will then cancel the original housing assistance payment and issue a new one.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- PHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- PHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by OHA. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13-II.C. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, OHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. OHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by OHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus OHA's HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment, and OHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from OHA, the excess amount must be returned immediately. If OHA determines that the owner is not entitled to all or a portion of the HAP, OHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from OHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

Late HAP Payments [24 CFR 982.451(a)(5)]

OHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if OHA fails to make the HAP payment on time. Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

OHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond OHA's control. In addition, late payment penalties are not required if OHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

Termination of HAP Payments [24 CFR 982.311(b)]

A PHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the PHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

OHA Policy

The owner must inform OHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform OHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide OHA with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, OHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform OHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation ns for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If a PHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

A PHA's rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination the HAP contract. The PHA may also obtain additional relief by judicial order or action.

The PHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The PHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

OHA Policy

Before OHA invokes a remedy against an owner, OHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, OHA will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, OHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

13-II.E. HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The PHA terminates the HAP contract;
- The PHA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- The family is absent from the unit for longer than the maximum period permitted by the PHA;
- The Annual Contributions Contract (ACC) between the PHA and HUD expires
- The PHA elects to terminate the HAP contract.

  OHA Policy

  OHA may elect to terminate the HAP contract in each of the following situations:

  - Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];
  - The unit does not meet HQS size requirements due to a change(s) in family composition [24 CFR 982.403] – see chapter 8;
  - The unit does not meet HQS [24 CFR 982.404] – see chapter 8;
  - The family breaks up [HUD Form 52641] – see chapter 3;
  - The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the PHA terminates the HAP contract, the PHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

OHA Policy
The HAP contract terminates at the end of the calendar month that follows the calendar month in which OHA gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to OHA any housing assistance payment received after this period.

At the discretion of OHA, the HAP contract may provide for vacancy loss payments to of up to two months HAP for an OHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by OHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Vacancy loss payments of up to two months HAP will be offered to existing HCV owners if they re- rent a unit previously occupied by an HCV tenant to another HCV participant within two months of contract cancellation.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].
When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

Death of single member household [PIH Notice 2010-9]

The HAP contract terminates automatically upon the death of a single member household, including single member households with a live-in aide.

When the HOH dies and the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy in a subsidized unit.
For deceased single member households or a household where the remaining household member is a live-in aide, PHAs are required to discontinue HAP to the owner no later than the first of the following month after the death occurred.

If an owner receives HAP for any month in which the owner is ineligible to receive HAP because of a deceased tenant, the PHA must immediately notify the owner in writing of the ineligible HAP and require the owner to repay the overpayment to the PHA within 30 days. If the owner does not comply, the PHA may deduct the amount due to the PHA from any amounts due to the owner under any other HAP contract. If there is no other HAP contract with the owner, the PHA may seek and obtain additional relief by judicial order or action in accordance with state and local laws.

13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]

The HAP contract cannot be assigned to a new owner without the prior written consent of the PHA.

An owner under a HAP contract must notify the PHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the PHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the PHA finds acceptable. The new owner must provide the PHA with a copy of the executed agreement.

OHA Policy

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

OHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 10 business days of receiving the owner's request, OHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to OHA that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed;
- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- The effective date of the HAP contract assignment;
- A written agreement to comply with the terms of the HAP contract; and
- Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, OHA will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, OHA will process the leasing in accordance with the policies in chapter 9.

13-II.G. FORECLOSURE [Notice PIH 2010-49]

PHA Responsibilities

The HAP contract provides that it shall be interpreted and implemented in accordance with HUD requirements. The contract incorporates by reference the statutory provisions discussed in this notice and the June 24, 2009 Federal Register notice HUD issued on this subject (74 Fed. Reg. 30106) through the definition of HUD requirements. As soon as possible after the issuance of this notice, the Department will revise the applicable forms in the HCV program. In the interim, the PHA must provide notice to the landlord and tenant that the terms of the HAP contract incorporate the changes in law outlined in this Notice and the Notice published in the Federal Register on June 24, 2009. The existing contracts and forms that have been executed will not need to be amended by the PHA. Once the new forms have been issued by HUD, the PHA must use the most recently issued form of the HAP contracts and tenancy addendums for participants that move or new participants.

Notifications:
For every unit in which a tenant receiving Housing Choice Voucher (HCV) assistance resides and is currently provided assistance under a HAP contract, the PHA must:

A. Provide notice to the Landlord or party executing the contract of the changes in law outlined in this Notice. This Notice can be provided in the most effective manner as determined by the PHA, including but not limited to providing information at landlord meetings, providing notice with the monthly payments, or independent mailings.

B. Provide notice to the Head of Household that is receiving HCV assistance of their rights as a result of the change in law outlined in this Notice. This Notice can be provided in the most effective manner as determined by the PHA, including but not limited to providing explanations of the tenant rights at scheduled reexaminations, tenant meetings, case management meetings, or a direct mailing.

C. Notify HCV applicants that have been issued a voucher as well as prospective owners about the new law. A PHA may also choose to provide notice to the local entity that oversees foreclosure actions, most commonly the Sherriff's office or local courts.

If a PHA learns that the property is in foreclosure, the PHA must:

A. Make all reasonable efforts to determine the status of the foreclosure and ownership of the property. This information can most likely be obtained through information that has been sent to the tenant notifying them of the foreclosure, and possibly in a 90 day notice to vacate. Additionally, PHA's may review legal notices in the local newspaper or the local governments web site to keep apprised of foreclosure actions initiated against owners of HCV assisted properties.

B. Continue to make payments to the original owner until ownership legally transfers in

accordance with the HAP contract. With the exception of HUD-insured mortgages or loans, defaulting on a mortgage/loan is not a breach of the HAP contract.

C. Attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. The written agreement should include a request for owner information such as a Tax Identification Number, and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is nevertheless effective by operation of law.

D. Inform the tenant that they must continue to pay rent in accordance with the lease, and if the successor in interest refuses to accept payment or cannot be identified, the tenant should pay the rent into escrow, because failure to pay rent may constitute an independent ground for eviction.

E. If the PHA is unable to make HAP payments to the successor in interest due to: (1) An action or inaction by the successor in interest that prevents such payments, including the rejection of payments or the failure of the successor to maintain the property in accordance with Housing Quality Standards (HQS); or (2) An inability to identify the successor, the PHA should inform the family of this. In order to ensure adequate protection of the tenant's rights under the statutory authority as well as enforcing performance of the successor in interest under the HAP contract, the PHA should refer tenants, as services are needed, to the local Legal Aid Office.

The PHA must make reasonable inquiries to determine whether the unit, in addition to having a tenant receiving HCV assistance, will be (or has been) assisted under the Neighborhood Stabilization Program (NSP). The Department believes that units covered by this notice that receive such assistance will be rare. The PHA may inquire with the applicable units of local government to determine if properties occupied by Section 8 participants are under consideration for the NSP program.

In cases where the units have received assistance under the NSP, the PHA may use the funds that would have been used to pay the rent for other purposes. These other purposes include:

1. To pay utilities that are the owner's responsibility under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to pay utilities rather than make payments to the owner;
   - The PHA is *not* required to notify the owner before making a utility payment if the unit has been or will be rendered uninhabitable by the termination or threat of termination of service. In that case, the PHA will notify the owner within a reasonable time after making the payment.
2. To pay the families moving costs, including security deposit costs.
3. Any funds that remain after use for these authorized purposes must only be used for housing assistance payments.

Any funds used for these purposes must be recorded and tracked in accordance with Generally Accepted Accounting Principles.

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Chapter 14

PROGRAM INTEGRITY

INTRODUCTION

OHA is committed to ensuring that subsidy funds made available to OHA are spent in accordance with HUD requirements.

This chapter covers HUD and OHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents OHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures OHA must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

14-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 HCV program is administered effectively and according to the highest ethical and legal standards, OHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

OHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

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 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 family members and owners.

OHA staff is required to review and explain the contents of all HUD- and OHA-required forms prior to requesting household 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.

14-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, but not limited to:

OHA routinely will use available sources of up-front income verification to compare with family-provided information.

At each scheduled reexamination, current information provided by the family will be compared to information provided at the last scheduled reexamination to identify inconsistencies and incomplete information.

OHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all PHAs that expend $500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of OHA activities and notifies OHA of errors and potential cases of program abuse.

OHA Policy

OHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of OHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

OHA Policy

OHA will encourage staff, residents, and the public to report possible program abuse.

14-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 982.516]

OHA may investigate possible instances of error or abuse using all available OHA and public records. If necessary, OHA will require HCV 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.

In the case of owner-caused errors or program abuse, the PHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) 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 review or hearing process, if applicable (see Chapter 16).

PART II: CORRECTIVE MEASURES AND PENALTIES

14-II.A. SUBSIDY UNDER- OR OVERPAYMENT

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect subsidy determination results in an overpayment or underpayment of subsidy, OHA must promptly correct the HAP, family share and any utility reimbursement prospectively.

OHA Policy

Increases in the family share will be implemented only after the family has received 30 days notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family or owner is required to reimburse OHA or OHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this Plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy 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.

Family Reimbursement to OHA [HCV GB pp. 22-12 to 22-13]

OHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. 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 excess subsidy, OHA will terminate the family's assistance in accordance with the policies in Chapter 12.

OHA Reimbursement to Family [HCV GB p. 22-12]

OHA Policy

OHA will not reimburse the family for any underpayment of subsidy when the underpayment clearly is caused by the family.

Prohibited Actions

An applicant or resident in the HCV program must not knowingly:

- Make a false statement to OHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

OHA Policy

Any of the following will be considered evidence of family program abuse:

Altering the benefits of existing income or assets to qualify for eligibility.

Altering the benefits of existing income or assets to avoid the increases to the family's rent portion and to avoid program termination due to 24 months of zero HAP payment. This prohibits a program participant from terminating one's own employment and creating a pattern of reduced income or unemployment at the time of the next scheduled recertification. If a participant reports two (2) or more instances of job loss or income reductions within one hundred and twenty (120) days of the effective date of a regular reexamination, the family's rent will be determined using past, rather than prospective income. Prior year's income information may not be used if the family can provide verifiable evidence that the two (2) or more instances of job loss or income reduction within one hundred and twenty (120) days of a regular or interim reexamination are reasonable.

Payment to the owner in excess of amounts authorized by the PHA for rent, security deposit, and additional services

Offering bribes or illegal gratuities to the OHA Board of Commissioners, employees, contractors, or other OHA representatives

Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to OHA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents

Intentional misreporting of family information or circumstances (e.g., income, 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 excess subsidy amounts paid by OHA, as described earlier in this section.
- 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 12 (for participants).
- OHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- OHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

Owner Reimbursement to the PHA

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the PHA any excess subsidy received. The PHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the PHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

OHA Policy

In cases where the owner has received excess subsidy, OHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

Prohibited Owner Actions

An owner participating in the HCV program must not:

- Make any false statement to the PHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

OHA Policy

Any of the following will be considered evidence of owner program abuse:

Charging the family rent above or below the amount specified by OHA

Charging a security deposit other than that specified in the family's lease

Charging the family for services that are provided to unassisted tenants at no extra charge

Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit

Knowingly accepting incorrect or excess housing assistance payments

Offering bribes or illegal gratuities to OHA's Board of Commissioners, employees, contractors, or other OHA representatives

Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to OHA

Residing in the unit with an assisted family

Prohibited Activities

OHA Policy

When OHA determines that the owner has committed program abuse, OHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any OHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

14-II.D. OHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of OHA staff with respect to normal program administration are discussed throughout this Plan. This section specifically addresses actions of an OHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the OHA Personnel policy.

OHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

De Minimis Errors [24CFR 5.609(c)(4); 882.515(f); 882.808(i)(5); 960.257(f); and 982.516(f)]

OHA must take corrective action to credit or repay a family if the family was overcharged tenant rent because of de minimis errors in calculating family income. A *de minimis error* is an error where the determination of household income varies from the correct income determination by no more than $30 per month in monthly adjusted income ($360 in annual adjusted income) per family.

Families will not be required to repay OHA in instances where OHA miscalculated income resulting in a family being undercharged for rent.

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.

Any of the following will be considered evidence of program abuse by OHA staff:

- Failing to comply with any HCV program requirements for personal gain
- Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant or owner
- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to OHA

Prohibited Activities

OHA Policy

- 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 HCV funds
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program
- Committing any other corrupt or criminal act in connection with any federal housing program

14-II.E. CRIMINAL PROSECUTION

OHA Policy

When OHA determines that program abuse by an owner, family or OHA staff member has occurred and the amount of overpaid subsidy 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 overpaid assistance 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.

14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES

A PHA may retain a portion of program fraud losses that the PHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The PHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the PHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the PHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of the PHA related to the collection, these costs must be deducted from the amount retained by the PHA.

Chapter 15

SPECIAL HOUSING TYPES
[24 CFR 982 Subpart M]

INTRODUCTION

PHAs may permit a family to use any of the special housing types discussed in this chapter. However, a PHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. A PHA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].OHA Policy

Families receiving assistance from OHA will be permitted to use only the following special housing types:

Single Room Occupancy

Manufactured Homes (including manufactured home space rental)

Homeownership

Families are not permitted to use any other special housing types, unless use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities. The description of prohibited special housing types is included here in case they are used as a reasonable accommodation.

This chapter consists of the following eight parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types. Although not considered a special housing type by HUD, Project-based vouchers have been included in this chapter since, like the other housing types included here, it is at a PHA's discretion to include these vouchers in their program.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership

Under MTW authority, OHA may determine property eligibility criteria, including types of units currently prohibited by Section 8 regulations, as well as shared living facilities. If the Agency chooses to use this authorization, it will provide a transition plan to both the affected residents and HUD prior to the end of the demonstration. ***This authorization waives certain provisions of Section 8(p) of the 1937 Act and 24 CFR 983.53-54 and Subparts H and M as necessary to implement the Agency's Annual MTW Plan. OHA may establish alternate payment standards and exception payment standard hubs as authorized by MTW activity #17-01 or alternative payment standards through authorized payment standard waiver requests.***

PART I. SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605]

15-I.A. OVERVIEW

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for SRO housing is 75 percent of the 0-bedroom payment standard amount on OHA's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

15-I.C. HOUSING QUALITY STANDARDS (HQS)

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access*: Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety*: All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, carbon monoxide detectors, and any other fire and safety equipment required by state or local law.

  Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities*: At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security*: An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

  Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

PART II. CONGREGATE HOUSING

[24 CFR 982.606 through 982.609]

15-II.A. OVERVIEW

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by OHA, a family member or live-in aide may reside with the elderly person or person with disabilities. OHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), OHA must use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), OHA must use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

15-II.C. HOUSING QUALITY STANDARDS

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

> Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.
>
> The housing quality standards applicable to lead-based paint do not apply.

PART III. GROUP HOME

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

15-III.A. OVERVIEW

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by OHA, a live-in aide may live in the group home with a person with disabilities. OHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0- or 1-bedroom, depending on OHA's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, OHA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15-III.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities*: A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service*: Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security*: Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material*: To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood*: Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

PART IV. SHARED HOUSING

[24 CFR 982.615 through 982.618]

15-IV.A. OVERVIEW

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by OHA, a live-in aide may reside with the family to care for a person with disabilities. OHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, OHA should consider whether sanitary and food preparation areas are private or shared.

15-IV.C. HOUSING QUALITY STANDARDS

OHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family*: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security*: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

PART V. COOPERATIVE HOUSING

[24 CFR 982.619]

15-V.A. OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged "rent" a cooperative member is charged a "carrying charge."

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

15-V.C. HOUSING QUALITY STANDARDS

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

PART VI. MANUFACTURED HOMES

[24 CFR 982.620 through 982.624]

15-VI.A. OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and OHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. OHA will provide assistance to such families who meet all other program requirements.

15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE

Family Income

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

Lease and HAP Contract

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

Payment Standards

The FMR for a manufactured home space is generally 40 percent of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. OHA will establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces. OHA will use the same percentage or methodology it is using to establish other payment standards on the program.

Utility Allowance

OHA will establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

Space Rent

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

Housing Assistance Payment

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

Rent Reasonableness

Initially, and annually thereafter OHA will determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. OHA will consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the manufactured home park or elsewhere.

15-VI.D. HOUSING QUALITY STANDARDS

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

Manufactured Home Tie-Down

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

PART VII. HOMEOWNERSHIP

[24 CFR 982.625 through 982.643]

15-VII.A. OVERVIEW [24 CFR 982.625]

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. A PHA must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

There are two forms of homeownership assistance a PHA may offer under this option: monthly homeownership assistance payments, or a single down payment assistance grant. PHAs may choose to offer either or both forms of homeownership assistance, or choose not to offer either. If a PHA offers both forms of assistance, a family must choose which form of assistance to receive.

OHA Policy

OHA will only offer monthly homeownership assistance payments. The homeownership option is limited to 5% of the total HCV Program in any fiscal year. OHA may exceed this limit only if needed as a reasonable accommodation.

OHA will offer a single down payment assistance grant if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of OHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. OHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. OHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where OHA has otherwise opted not to implement a homeownership program.

OHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

15-VII.B. FAMILY ELIGIBILITY [24 CFR 982.627]

- The family must meet all of the requirements listed below before the commencement of homeownership assistance. The PHA may also establish additional initial requirements as long as they are described in the PHA administrative plan. The family must qualify as a first-time homeowner, or may be a cooperative member. First-time homeowner is defined to mean that no member of the family has had an ownership interest in the residence of any family member during the three years preceding commencement of homeownership assistance. However, a single parent or displaced homemaker who, while married, owned a home with a spouse (or resided in a home owned by spouse) is considered a first-time homeowner for the purpose of the Section 8 Homeownership Program.
- The family must meet an income standard that is based on the City of Oakland minimum wage. The minimum gross annual income for the family should be equal to the City of Oakland minimum wage multiplied by 2000 hours, based on the income of adult family members who will own the home. However, a family that meets the Federal minimum income requirement of a gross annual income equal to the Federal minimum wage multiplied by 2000, will be considered to meet the minimum income requirement if the family can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit. For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.
- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, the PHA must grant an exemption from the employment requirement if the PHA determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option
- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).
- The family must have completed all required Home Ownership Counseling programs.

The family must have fully repaid any outstanding debt to any Housing Authority.

15-VII.C. SELECTION OF FAMILIES

Participation in the Section 8 Homeownership Program is voluntary. OHA will offer the homeownership option to participating families who are Housing Choice Voucher program participants meeting the general requirements for continued participation in the program and:

- Are currently enrolled in the Family Self-Sufficiency (FSS) Program and are complying with their FSS contract or;.
- Are graduates of the FSS program or;.
- Are an elderly family or;
- Are a disabled family or;
- Are participating in an Individual Development Account (IDA) program, or any other HUD, state or local governmentally approved Homeownership Program.

OHA Policy

Under MTW authority, OHA may also admit a family to the Section 8 Homeownership program if they are a participant in good standing in any OHA administered program and would otherwise qualify for Section 8 Homeownership participation (see Section 15-VII. B.), and have completed participation in an Individual Development Account (IDA) program, or any other HUD, state or local governmentally approved Homeownership Program.

If a family has owed a debt to the Housing Authority within the five years prior to admittance to the Homeownership program, due to failure to report income, or any other program violations, the family will not be eligible to participate in the Section 8 Homeownership program.

If it is determined at any time during the pre-purchase process that the family failed to report income, household composition or assets during any of their recertifications, the family will not be eligible to participate in the Section 8 Homeownership program.

Other OHA administered programs include but are not limited to the Conventional Public Housing program and Moderate Rehabilitation program. New admissions to the Section 8 Homeownership program from other OHA administered programs are limited to a maximum of 15 families per calendar year.

If OHA reaches the maximum number of families it can serve, it will start a wait list and select families to participate in the program based on time and date of application for the homeownership program.

15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]

In order for a unit to be eligible, OHA must determine that the unit satisfies all of the following requirements:

- The unit must meet HUD's "eligible housing" requirements. The unit may not be any of the following:
  - A public housing or Indian housing unit;
  - A unit receiving Section 8 project-based assistance;
  - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
  - A college or other school dormitory;
  - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by OHA and by an independent inspector designated by the family.
- The unit must meet Housing Quality Standards (see Chapter 8).
- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.
- For OHA-owned units all of the following conditions must be satisfied:
  - OHA informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and an OHA-owned unit is freely selected by the family without OHA pressure or steering;
  - The unit is not ineligible housing;
  - OHA obtains the services of an independent agency to inspect the unit for compliance with HQS, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any OHA provided financing. All of these actions must be completed in accordance with program requirements.

OHA must not approve the unit if OHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

15-VII.E. ADDITIONAL PHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. The PHA may establish the maximum time that will be allowed for a family to locate and purchase a home, and may require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

OHA Policy

The family must locate a home to purchase within 180-days from the date the family is issued a homeownership voucher. The family will be issued a homeownership voucher once they have completed all required pre-purchase counseling. Extensions may be granted on a case-by-case basis.

OHA will require periodic reports on the family's progress in finding and purchasing a home. The family will provide such reports on a monthly basis to the Homeownership Coordinator.

If the family is unable to purchase a home within the maximum time limit, OHA will issue the family a voucher to lease a unit if the family is in compliance with HCV program rules.

15-VII.F. PRE-PURCHASE HOMEOWNERSHIP COUNSELING [24 CFR 982.630]

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by OHA. The following topics are required by OHA-for pre-purchase counseling:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.)

(RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

OHA may adapt the subjects covered in pre-purchase counseling (as listed) to the needs of individual families.

OHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If OHA offers a program of ongoing counseling for participants in the homeownership option, OHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If OHA does not use a HUD-approved housing counseling agency to provide the counseling, OHA will ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER [24 CFR 982.631]

Home Inspections

OHA will not commence monthly homeownership assistance payments or provide down payment assistance grants for a family until OHA has inspected the unit and has determined that the unit passes HQS.

OHA Policy

The unit must pass HQS inspection prior to the close of escrow. The seller must make any repairs identified in both independent and HQS inspection reports to bring the home into HQS compliance prior to the close of escrow.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

OHA will not require the family to use an independent inspector selected by OHA. The independent inspector may not be an OHA employee or contractor, or other person under control of OHA. However, OHA may establish standards for qualification of inspectors selected by families under the homeownership option.

OHA may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with HQS.

Contract of Sale

Before commencement of monthly homeownership assistance payments or receipt of a down payment assistance grant, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give OHA a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser;
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser;
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is

satisfactory to the purchaser;

- Provide that the purchaser is not obligated to pay for any necessary repairs; and
- Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under CFR part 24.
- Must not contain a rent-back agreement

Disapproval of a Seller

In its administrative discretion, OHA may deny approval of a seller for the same reasons OHA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

15-VII.H. FINANCING [24 CFR 982.632]

PHAs may establish requirements for financing the purchase of a home under the homeownership option. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt. The PHA must establish policies describing these requirements in the administrative plan.

A PHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

OHA Policy

The family is responsible for securing financing. OHA has established financing requirements, listed below, and may disapprove proposed financing if OHA determines that the debt is unaffordable. OHA *may prohibit* the following forms of financing:

1. Balloon payment mortgages
2. Variable interest rate loans
3. Seller financing on a case-by-case basis
4. All costs cannot exceed 40% of monthly gross income

If the mortgage is not FHA-insured, OHA will require the lender to comply with generally accepted mortgage underwriting standards consistent with those of HUD/FHA, Ginnie Mae, Fannie Mae, Freddie Mac, California Housing Finance Agency (CHFA), USDA Rural Housing Services, The Federal Home Loan Bank or other private lending institutions.

OHA requires that the participating family contribute their own resources towards the transaction. Disabled and elderly families must contribute a minimum of 1% of the purchase price. Non-elderly or non-disabled families must contribute a minimum of 3.5% of the purchase price. This may include but is not limited to:

- Down payment
- Recurring closing costs
- Nonrecurring closing costs
-

15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, OHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to OHA the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The family must supply information to OHA or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by OHA or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify OHA before moving out of the home.
- The family must notify OHA if the family defaults on the mortgage used to purchase the home.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).
- The family must notify OHA before re-financing or incurring any additional debt secured by their home.
- The family's monthly payment must not exceed 40% of their gross monthly income.
- The family will be required to attend post purchase counseling courses.

  OHA Policy

  The family will be required to pay a minimum mortgage of $250.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this part.

15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]

The monthly homeownership assistance payment is the lower of: the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, OHA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described in elsewhere in this plan for the Housing Choice Voucher program.

OHA may pay the homeownership assistance payments directly to the family, or at OHA's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, OHA will pay the excess directly to the family.

Homeownership assistance for a family terminates automatically 2 years after the last homeownership assistance payment on behalf of the family. OHA may waive this requirement in cases where an automatic termination would result in extreme hardship for the family.

Homeownership expenses (not including cooperatives) only include amounts allowed by OHA to cover:

- Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;
- Real estate taxes and public assessments on the home;
- Home insurance;
- OHA's allowance for maintenance expenses;
- OHA's allowance for costs of major repairs and replacements;
- OHA's utility allowance for the home;
- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if OHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

Homeownership expenses for a cooperative member may only include amounts allowed by OHA to cover:

- The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;
- Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;
- Home insurance;
- OHA's allowance for maintenance expenses;
- OHA's allowance for costs of major repairs and replacements;
- OHA's utility allowance for the home; and
- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if OHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

15-VII.L. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]

Subject to the restrictions on portability included in HUD regulations and OHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program, or bill OHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of, the unit are acceptable. The receiving PHA must promptly notify OHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by OHA.

15-VII.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home.

OHA will deny permission to move to a new unit with continued voucher assistance as follows:

- Lack of funding to provide continued assistance.
- At any time, OHA may deny permission to move with continued rental or homeownership assistance in accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with OHA's policy regarding number of moves within a 12-month period.

OHA must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]

At any time, OHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 (Grounds for denial or termination of assistance) or 24 CFR 982.553 (Crime by family members).

OHA may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633.

OHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.

Chapter 16

PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes OHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status. T

Part IV: Owner or Family Debts to OHA. This part describes policies for recovery of monies that OHA has overpaid on behalf of families, or to owners, and describes the circumstances under which OHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). As an MTW agency, OHA is not subject to SEMAP. As part of MTW, OHA will develop performance measures to replace SEMAP.

Part VI: 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 VII: Reporting and Record Keeping for Children with Elevated Blood Lead Level. This part describes OHA's responsibilities for reporting, data collection, and record keeping relative to children with elevated blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes OHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: 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 X: Conflict of Interest Policy. This part describes OHA's conflict of interest policies in connection with all OHA administered Section 8 programs.

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

PHAs must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover OHA administrative expenses, OHA may use these funds for other housing purposes permitted by Federal, State and local law.

If OHA has not adequately administered any HCV program, HUD may prohibit use of funds in the administrative fee reserve, and may direct OHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses.
HUD also may prohibit use of the funds for certain purposes.

HUD requires the OHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

OHA Policy

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements and will align with OHA's Board of Commissioners approved Executive Director procurement authority.

PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow OHAs to adapt the program to local conditions. This part discusses how OHAs establish and update certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

OHA Policy

Copies of the payment standard and utility allowance schedules are available for review in OHA's offices during normal business hours. Copies are also available on OHA's web site.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

OHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from OHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

OHAs must establish a payment standard schedule that establishes payment standard amounts for each FMR area within OHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, OHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, OHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

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 requirement 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 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982503 and 982.518, as necessary to implement the Agency's Annual MTW Plan. OHA may establish alternate payment standards or exception payment standard hubs as authorized by MTW activity #17-01 or alternative payment standards through authorized payment standard waiver requests.***

Updating Payment Standards

When HUD updates its FMRs, OHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require OHA to make further adjustments if it determines that rent burdens for assisted families in OHA's jurisdiction are unacceptably high 24 CFR 982.503(g)].

OHA Policy (MTW)

To maximize housing opportunities for low income families, OHA is not limited to establishing payment standards the within the HUD basic range of between 90 percent and 110 percent of the published FMR for each that unit size. OHA is authorized to establish payment standards for the MTW Housing Choice Voucher program that reflect current local rental market conditions. OHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

Funding Availability: OHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. OHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

Rent Burden of Participating Families: Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 40 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 40 percent of adjusted monthly income as the family share, OHA will consider increasing the payment standard. In evaluating rent burdens, OHA will not include families renting a larger unit than their family unit size.

Quality of Units Selected: OHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard

increases are only made when needed to reach the mid-range of the market.

Changes in Rent to Owner: OHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size. OHA will also consider the trends in market rate rents in the City of Oakland.

Unit Availability: OHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

Lease-up Time and Success Rate: OHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Any change to payment standard amounts will be effective on the 1st of the month, at least 90 after OHA's determination of need to revise the payment standard schedule. If OHA has already processed reexaminations that will be effective on or after the 1st, of the month in which the new payments standard are to be effective, OHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by OHA at the time the reexamination was originally processed.

Exception Payment Standards [982.503(c)]

OHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any OHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii), 24 CFR 982.505(d), Notice PIH 2010-26]

Unit-by-unit exceptions to OHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect OHA's payment standard schedule.

When needed as a reasonable accommodation, OHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [HCV GB 7-9]. OHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds120 percent of the published FMR.

OHA Policy

A family that has a disabled person who requires a reasonable accommodation may request a higher payment standard of more than 120 percent of the fair market rent at the time the Request for Tenancy Approval (RTA) is submitted. The family must document the need for the exception and OHA must verify. In order to approve an exception, or request an exception from HUD, OHA must determine that:

There is a shortage of affordable units that would be appropriate for the family;

The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and

The rent for the unit is reasonable.

"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]

If a substantial percentage of families have difficulty finding a suitable unit, OHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows OHA to set its payment standards at 90-110 percent of a higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, OHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- OHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- OHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit. Although HUD approves the success rate payment standard for all unit sizes in the FMR area, OHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of OHA's jurisdiction within the FMR area.

Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]

OHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

16-II.C. UTILITY ALLOWANCES [MTW]

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 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982503 and 982.518, 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 Housing Choice Voucher program that will reduce costs and achieve greater cost effectiveness in Federal expenditures and give incentives to families with children where the head of household is working, is seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient. Policies developed under MTW authority will also encourage low income families to conserve energy and lease energy efficient units.

OHA Policy

Under MTW authority, OHA will implement a Modified Utility Allowance determination. Upon approval, a household's utility allowance schedule will be based on lower of:

- the number of bedrooms authorized by the family's minimum subsidy standard, or
- the actual number of bedrooms in the unit leased by the family

If there are no tenant responsible utilities in the unit, the family will not receive a utility allowance.

When OHA's subsidy for a family exceeds the rent to owner, OHA will **not** make a Utility Reimbursement Payment (URP) to the family. (see Section 6.III.A.)

A utility allowance is an additional benefit to participants, and it is OHA's policy to limit this allowance to encourage participants to seek energy efficient units where possible and to conserve and control their energy use.

Reasonable Accommodation

HCV program regulations require OHA to approve a utility allowance amount higher than shown on OHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, OHA will approve a higher allowance on a case-by case basis. (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

Utility Allowance Revisions

OHA may review its schedule of utility allowances periodically, and may revise the schedule as necessary.

PART III: INFORMAL REVIEWS AND HEARINGS

16-III.A. OVERVIEW

When OHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

OHA is required to include in its administrative plan, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. [*Federal Register* 60, no. 127 (3 July 1995): 34690].

Decisions Subject to Informal Review

OHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the OHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures
- Denying admissions for failed criminal history
- Denying admissions for failed general suitability

Informal reviews are *not* required for the following reasons [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
- An OHA determination not to grant approval of the tenancy
- An OHA determination that the unit is not in compliance with the HQS
- An OHA determination that the unit is not in accordance with the HQS due to family size or composition

OHA Policy

OHA will only offer an informal review to applicants for whom assistance is being denied (as defined above).

Notice to the Applicant [24 CFR 982.554(a)]

OHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for OHA's decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

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-5382) in accordance with the Violence against Women Reauthorization Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

OHA Policy

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

Scheduling an Informal Review

OHA Policy

A request for an informal review 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 denial of assistance.

OHA must schedule and send written notice of the informal review within 10 business days of the family's request.**16-III.B. INFORMAL REVIEWS (cont.)**

Informal Review Procedures [24 CFR 982.554(b)]

The informal review will be conducted by a person other than the one who made or approved 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 review will make a determination as to whether assistance should be granted or denied.

If the decision to deny admission is upheld, the applicant will be provided written notification that this is their last administrative review and the decision is final.

Informal Review Decision [24 CFR 982.554(b)]

OHA must notify the applicant of OHA's final decision, including a brief statement of the reasons for the final decision.

OHA Policy

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 assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. OHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, OHA will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, OHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

OHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 14 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]

OHAs must offer an informal hearing for certain OHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to OHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether OHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and OHA policies.

OHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

Decisions Subject to Informal Hearing

Circumstances for which OHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from OHA's utility allowance schedule
- A determination of the family unit size under OHA's subsidy standards or an OHA determination to deny the family's request for exception from the subsidy standards as a reasonable accommodation
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under OHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by OHA
- General policy issues or class grievances
- Establishment of OHA's schedule of utility allowances for families in the program
- An OHA determination not to approve an extension or suspension of a voucher term
- An OHA determination not to approve a unit or tenancy
- An OHA determination that a unit selected by the applicant is not in compliance with the HQS
- An OHA determination that the unit is not in accordance with HQS because of family size
- A determination by OHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

OHA Policy

OHA will only offer participants the opportunity for an informal hearing when required to by the regulations.

Warning Meeting

It is OHA's objective to resolve disputes at the lowest level possible, and to make every effort to avoid the most severe remedies. Therefore, a meeting may be held with a Section 8 participant in cases where that participant's alleged actions or inactions may not serious enough to justify termination of assistance. The meeting would serve to inform the participant of the Housing Authority's allegations and will also function as a formal warning and official documentation of such warning. The primary goal of a warning meeting is to resolve the Housing Authority's allegations without subjecting the participant to the hearing process. The secondary goal of the meeting is to provide further documentation for cases that will proceed to a termination hearing. Regardless of whether or not a participant had a warning meeting, the participant is always entitled to an informal hearing as per HUD regulations.

Informal Hearing Procedures

Notice to the Family [24 CFR 982.555(c)]

When OHA makes a decision that is subject to informal hearing procedures, OHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, OHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to OHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

OHA Policy

In cases where OHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- The proposed action or decision of OHA.
- A brief statement of the reasons for the decision including the regulatory reference.
- The date the proposed action will take place.
- A statement of the family's right to an explanation of the basis for OHA's decision.
- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.
- A deadline for the family to request the informal hearing.
- To whom the hearing request should be addressed.
- The protections against termination available to victims of domestic violence, dating violence, sexual assault or stalking and their families.
- A reminder of the family's right to bring counsel to the informal hearing and referral information for local legal services organizations

Scheduling an Informal Hearing [24 CFR 982.555(d)]

When an informal hearing is required, OHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

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 14 calendar days from the date of OHA's decision or notice to terminate assistance.

OHA must schedule and send written notice of the informal hearing to the family within 14 calendar days of the family's request.

The family 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.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact OHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. OHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Pre-Hearing Right to Discovery [24 CFR 982.555(e)]

Participants and OHAs are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any OHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If OHA does not make the document available for examination on request of the family, OHA may not rely on the document at the hearing.

OHA hearing procedures may provide that OHA must be given the opportunity to examine at the OHA offices before the hearing, any family documents that are directly relevant to the hearing. OHA must be allowed to copy any such document at OHA's expense. If the family does not make the document available for examination on request of OHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

OHA Policy

Whenever a participant requests an informal hearing, OHA will automatically mail a confirmation letter to the participant that includes copies of all documents related to the hearing. The family will not be charged for these documents. If the family loses their documents they will be charged for additional copies at the rates currently used by OHA. The family must request additional copies of OHA documents no later than 12:00 p.m., two business days prior to the scheduled hearing date.

OHA must be given an opportunity to examine, at OHA's offices before the hearing, any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, OHA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm three business days prior to the scheduled hearing date.

Participant's Right to Bring Counsel **[24 CFR 982.555(e)(3)]**

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

Informal Hearing Officer **[24 CFR 982.555(e)(4)]**

Informal hearings will be conducted by a person or persons approved by OHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

OHA Policy

OHA has designated the following to serve as hearing officers:

Any OHA Manager, Management Analyst, or Lead Housing Representative that was not involved in the decision and who neither reports to, nor supervises the person who made the decision may serve as a hearing officer. OHA may also use contracted hearing officers to conduct Informal Hearings.

Attendance at the Informal Hearing

OHA Policy

Hearings may be attended by a hearing officer and the following applicable persons:

- An OHA representative(s) and any witnesses for OHA
- The participant and any witnesses for the participant
- The participant's counsel or other representative
- Any other person approved by OHA as a reasonable accommodation for a person with a disability

Conduct at Hearings

The person who conducts the hearing may regulate the conduct of the hearing in accordance with OHA's hearing procedures [24 CFR 982.555(4)(ii)].

OHA Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the

discretion of the hearing officer. The hearing officer will have everyone in attendance at the hearing sign-in, will determine if either side has any objections related to discovery and will set up the tape recorder for the hearing.

In the event both a survivor of VAWA violence/abuse and the alleged perpetrator are to be present at a hearing, OHA will provide prior notification to the survivor and will make arrangements to avoid both the survivor and the perpetrator being in the same location without violating either party's due process rights. This may be accomplished by having one or both individuals attend the hearing by teleconference or video meeting.

Evidence **[24 CFR 982.555(e)(5)]**

OHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

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 that is relevant to the case, for example, a letter written to OHA. Writings include all forms of recorded communication or representation, including letters, 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.

The lone exception to the above is when third party verification is needed to substantiate hearing testimony (e.g., proof of address). The hearing officer may allow a reasonable time for either side to submit relevant information. Information that is not produced by the hearing officer's deadline will not be considered.

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 either OHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Hearing Officer's Decision [24 CFR 982.555(e)(6)]

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. 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 hearing must be furnished promptly to the family.

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 OHA and the family were given the opportunity to examine any relevant documents in accordance with OHA policy.

OHA Evidence to Support its 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 Assistance (when applicable): The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and OHA's policies. If the grounds for termination are not specified in the regulations or in compliance with OHA's policies, then OHA's decision 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 participant;

Date, time and place of the hearing;

Name of the hearing officer;

Name of the OHA representative; and

Name of family representative (if any).

Background: A brief, impartial statement of the reason for the 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 assistance, the hearing officer will instruct OHA to restore the participant's program status.

Procedures for Rehearing or 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.

In addition, within 20 calendar days of the date or postmark of the hearing officer's decision is mailed to OHA and the participant, the participant may request a review by OHA's Executive Director or his/her authorized representative. Such request must be made in writing and postmarked or hand-delivered to the hearing officer and to the other party within the 20 calendar day period. The request must demonstrate cause, supported by specific references to the hearing officer's report, why the request should be granted.

If the participant requests review by the Executive Director within the specified time period, no action adverse to the participant can be taken until the Executive Director or his/her authorized representative issues a decision.. The Executive Director or his/her designee may uphold the decision, overrule the decision, or require that a new informal hearing be held. If the Executive Director decides that a new informal hearing should be held, the Executive Director will appoint a hearing officer other than the person that made the decision or a subordinate of such person. If the decision of the Executive Director or his/her designee, is not mailed or hand delivered to the participant within 30 calendar days of the request for review, the hearing officer's decision shall be deemed to be final.

A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing.

It shall be within the sole discretion of OHA to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.

OHA Notice of Final Decision [24 CFR 982.555(f)]

OHA is not bound by the decision of the hearing officer for matters in which OHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

If OHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, OHA must promptly notify the family of the determination and the reason for the determination.

OHA Policy

The hearing officer will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof mailing will be maintained in OHA's file.

16-III.D. 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. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the 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's 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)]

The notice of denial or termination of assistance for noncitizens must advise the family:

- 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 participant, 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.

USCIS 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 the 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, the family may request that OHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of OHA's 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. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

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

OHA will automatically mail the family a confirmation letter that includes copies of all documents related to the hearing. The family will not be charged for these documents. If the family loses their documents they will be charged for additional copies at the rates currently used by OHA. The family must request additional copies of OHA documents no later than 12:00 p.m., two business days prior to the scheduled hearing date.

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.

OHA is obligated to provide oral translation services in accordance with its LAP.

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 hearing. If requested, a copy of the hearing audio tape will be provided to the family. The family will be charged for the cost of duplication of the audio tape.

Hearing Decision

OHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Informal Hearing Procedures for Participant Families [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that OHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the OHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

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 the 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

PART IV: OWNER OR FAMILY DEBTS TO THE OHA

16-IV.A. OVERVIEW

OHA is required to include in the administrative plan, policies concerning repayment by a family of amounts owed to OHA [24 CFR 982.54]. This part describes OHA's policies for recovery of monies that have been overpaid on behalf of families, or to owners.

OHA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, OHA holds the owner or participant liable to return any overpayments to OHA.

OHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to OHA, OHA will utilize other available collection alternatives including, but not limited to, the following:

Collection agencies

Small claims court

Civil law suit

State income tax set-off program

16-IV.B. REPAYMENT POLICY

Owner Debts to the OHA

OHA Policy

Any amount due to OHA by an owner must be repaid by the owner within 30 days of OHA's determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, OHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments OHA will offer to enter into a repayment agreement in accordance with the policies below.

If the owner refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, OHA will ban the owner from future participation in the program and pursue other modes of recovery.

Family Debts to OHA

OHA Policy

Any debt that is owed to OHA by an HCV participant must be repaid by the

family. Repayment agreements continue to be owed by the family regardless of any changes in household composition including but not limited to changes in head of household. 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 assistance upon notification to the family and pursue other modes of recovery.

Repayment Agreement [24 CFR 792.103]

The term r*epayment agreement* refers to a formal document signed by a tenant or owner and provided to OHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

Repayment Agreement Guidelines

Down Payment Requirement

OHA Policy

Prior to the execution of a repayment agreement, the owner or family must pay a minimum of 10 percent of the balance owed to OHA.

Payment Thresholds

OHA Policy

Amounts up to $1,000 must be repaid within 12 months.

Amounts between $1,000 and $3,000 must be repaid within 24 months.

Amounts between $3,000 and $5,000 must be repaid within 36 months.

Amounts between $5,000 and $8,000 must be repaid within 48 months.

Amounts between $8,000 and $10,000 must be repaid within 60 months.

Amounts above $10,000 is an automatic cause for termination from the Section 8 HCV program.

Execution of the Agreement

OHA Policy

- The head of household and all household members 18 years of age and older must sign the repayment agreement.
- Household members reaching the age of 18 years of age must sign the repayment agreement. If these members have not signed the agreement and the debt comes due, these members are still required to acquire the debt.

Due Dates

OHA Policy

All payments are due by the close of business on the 7th day of the month. If the 7th does not fall on a business day, the due date is the close of business on the first business day after the 7th.

Non-Payment

OHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by OHA, the account will be considered delinquent. Participants who are delinquent more than twice during the term of the repayment agreement will have their Section 8 assistance terminated.

- All moneys owed to the Housing Authority must be paid by the final due date on the repayment agreement. If the debt is not repaid in full by the final due date, then the participant's assistance will be terminated.

No Offer of Repayment Agreement In Lieu of Termination

OHA Policy

OHA may not enter into a repayment agreement in lieu of termination if there is already a repayment agreement with the family or owner, or those amounts owed exceed $10,000. Refer to 16-IV.A. for recover methods.

PART V: MANAGEMENT ASSESSMENT (SEMAP)

16-V.A. OVERVIEW

As an MTW agency, OHA is not subject to SEMAP. As part of MTW, OHA will develop performance measures to replace SEMAP.

PART VI: RECORD KEEPING

16-VI.A. OVERVIEW

OHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, OHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-VI.B. RECORD RETENTION [24 CFR 982.158]

During the term of each assisted lease, and for at least three years thereafter, OHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, OHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting OHA budget and financial statements for the program;
- Records to document the basis for OHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.
- Notice PIH 2014-20 requires OHAs 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 transfer requested by victims of domestic violence, dating violence, sexual assault, and stalking under OHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [24 CFR 5.2002(e)(12)].

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

16-VI.C. RECORDS MANAGEMENT

OHAs 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 (pending HUD approval)

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.

Upfront Income Verification (UIV) Records

OHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in *Enterprise Income Verification (EIV) System OHA Security Procedures*, Version 1.2, issued January 2005.

OHA Policy

Prior to utilizing HUD's UIV system, OHA will adopt and implement UIV security procedures required by HUD.

Criminal Records

OHAs 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 the OHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

OHs must establish and implement a system of records management that ensures that any sex offender registration information received by OHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the OHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28].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-IX.E.

PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

OHAs have certain responsibilities relative to children with elevated blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that OHA is subject to.

16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]

OHAs must report the name and address of a child identified as having an elevated blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

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 has executed a partnership agreement with the Alameda County Lead Based Prevention Program (ACLPPP) for sharing and cross-referencing of information with the public health department.

16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]

At least quarterly, OHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified elevated blood lead level.

If OHA obtains names and addresses of elevated blood lead level children from the public health department(s), OHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, OHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, OHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

OHA Policy

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, OHA is not providing such a report.

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

16-VIII.A. OVERVIEW

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding may also impact the OHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology OHA will use to determine whether or not OHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

16-VIII.B. METHODOLOGY

OHA Policy

OHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing OHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, OHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if OHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, OHA will be considered to have insufficient funding.

PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

16-IX.A. OVERVIEW

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws take precedence over VAWA.

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: 3-I.C, "Family Breakup and Remaining Member of Tenant Family"; 3-III.G, "Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking"; 10-I.A, "Allowable Moves"; 10-I.B, "Restrictions on Moves"; 12-II.E, "Terminations Related to Domestic Violence, Dating Violence, Sexual Assault or Stalking"; and 12-II.F, "Termination Notice."

For any VAWA questions or complaints, please contact the:

Fair Housing Specialist, Melissa Benik,
(510)874-1546
reasonableaccomodationvmb@oakha.org.

16-IX.B. DEFINITIONS [24 CFR 5.2003]

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any other individual, tenant or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.

- 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 *sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

16-IX.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 HCV program are aware of their rights under VAWA.

OHA Policy

OHA will post the following information regarding VAWA in its offices and on its website. It will also make the information readily available to anyone who requests it.

A copy of the notice of occupancy rights under VAWA to housing choice voucher 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-5382 (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 Participants [24 CFR 5.2005(a)(1)]

OHAs are required to inform program applicants and 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

OHA will provide all applicants with information about VAWA at the time they request an application for housing assistance as part of the written briefing packet and at the time th family is admitted to the program. OHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

OHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at scheduled reexaminations. OHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notice in Exhibit 16-1 and16-2.

OHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA decides to provide VAWA information to a participant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases 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 participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, OHA may decide not to send mail regarding VAWA protections to the victim's unit if OHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, OHA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

Notification to Owners and Managers

While OHA is no longer required by regulation to notify owners and managers participating in the HCV program of their rights and obligations under VAWA, it may still choose to inform them.

OHA Policy

OHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the program.

The VAWA information provided to owners will consist of the notice in Exhibit 16-2 and a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, and Stalking and Alternate Documentation.

16-IX.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. Upon request, OHA will allow for a 10 business day extension to respond to the request for VAWA documentation. OHA may extend this time period at its discretion. [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, or Stalking), which must include the name of the perpetrator only if the name is known and safe to provide and is know 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 signed by a person who assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional. Acceptable documentation also includes a record of an administrative agency, and documentation from a mental health professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in questions are bona fide incidents of abuse. The victim must also sign the documentation.

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 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 explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

OHA will extend the deadline for 10 business days, upon request.

Once the victim provides documentation, the PHA will acknowledge receipt of the documentation within 10 business days.

Conflicting Documentation [24 CFR 5.2007(e)]
In cases where 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. Individuals have 30 calendar days to return third-party verification to OHA. Upon request, OHA will allow for a 10 business day extension to respond to the request for VAWA documentation. 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 must honor any court orders issued to protect the victim or to address the distribution of property.

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. Upon request, OHA will allow for a 10 business day extension to respond to the request for VAWA 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 (as determined by the victim) 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, 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. Upon request, OHA will allow for a 10 business day extension to respond to the request for VAWA documentation.

16-IX.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 for a time-limited release, (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 (VAWA), FORM 5380

Oakland Housing Authority

Notice of Occupancy Rights under the Violence Against Women Act

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.[2] The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that the Housing Choice Voucher (HCV) program 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 HCV**,** 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.

[2] 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 HCV **,** 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 HCV 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.

- A 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.
- A 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.
- OHA 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.
- A 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 **Bay Area Legal Aid]** or **[SF HUD 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 **[Bay Area Legal Aid]**.

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 **[Bay Area Legal Aid]**

Victims of stalking seeking help may contact **[Bay Area Legal Aid]**.

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):

_____

_____

_____

_____

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 (HCV VERSION)

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),[3] 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.[4] 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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[3] 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.

[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.

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) _____

MODEL OWNER NOTIFICATION OF RIGHTS AND OBLIGATIONS

[Insert Name of Housing Provider]

NOTIFICATION OF YOUR RIGHTS AND OBLIGATIONS

UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)

VAWA provides protections for Section 8 Housing Choice Voucher (HCV) and PBV applicants, tenants, and participants from being denied assistance on the basis or as a direct result of being a victim of domestic violence, dating violence, sexual assault and stalking.

Purpose

Many of VAWA's protections to victims of domestic violence, dating violence, sexual assault and stalking involve action by the public housing agency (PHA), but some situations involve action by owners of assisted housing. The purpose of this notice (herein called "Notice") is to explain your rights and obligations under VAWA, as an owner of housing assisted through **[insert name of housing provider]** HCV program. Each component of this Notice also provides citations to HUD's applicable regulations.

Denial of Tenancy

*Protections for applicants***:** Owners cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, or stalking. However, the applicant must be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452(b)(1).)

Eviction

*Protections for HCV participants***:** Incidents or threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a serious or repeated lease violation by the victim, or good cause to terminate the tenancy of the victim (24 CFR 5.2005(c)). Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, or stalking, conducted by a member of a tenant's household or any guest or other person under the tenant's control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2005(b)(2)).

Limitations of VAWA protections:

a. Nothing in the VAWA Final Rule limits the authority of an owner, when notified of a court order, to comply with a court order with respect to (24 CFR 5.2005(d)(1)):

1) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

2) The distribution or possession of property among members of a household in a case.

b. Nothing in the VAWA Final Rule limits an owner from evicting a victim of domestic violence, dating violence, sexual assault, or stalking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, or stalking, as long as the owner does not subject the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)

c. Nothing in the VAWA Final Rule limits an owner from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, or stalking) if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

i. In this context, words, gestures, actions, or other indicators will be considered an "actual and imminent threat" if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)

ii. Any eviction due to "actual and imminent threat" should be utilized by an owner only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, or stalking, the owner has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD's regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

If the owner chooses to request this documentation, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

a. Form HUD-55383 (Self-Certification Form); or

b. A document: 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, "professional") from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse:

2) Signed by the applicant or tenant; and

3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or

c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

The owner must accept any of the above items (a – c). The owner has discretion to accept a statement or other evidence (d).

The owner is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, or stalking, unless the submitted documentation contains conflicting information.

If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the owner is encouraged to acknowledge receipt of the documentation in a timely manner.

If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation or within the designated extension period, nothing in VAWA Final Rule may be construed to limit the authority of the covered housing provider to:

a. Deny admission by the applicant or tenant to the housing or program;

b. Deny assistance under the covered housing program to the applicant or tenant;

c. Terminate the participation of the tenant in the covered housing program; or

d. Evict the tenant, or a lawful occupant that commits a violation of a lease.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings.

Moves

A victim of domestic violence, dating violence, sexual assault, or stalking may move in violation of their lease if the move is required to protect their safety. If a move results in the termination of the Housing Assistance Payment Contract, the lease is automatically terminated.

Lease Bifurcation

Owners may choose to bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual. (See 24 CFR 5.2009(a).) If an owner chooses to bifurcate the lease, the owner must comply with the reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation provision in 24 CFR 5.2009(b). VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.

Eviction, removal, termination of occupancy rights, or termination of assistance must be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases.
To avoid unnecessary delay in the bifurcation process, HUD recommends that owners seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the owner regains possession of the unit. The owner would then execute a new lease with the victim.

Evictions Due to "Actual and Imminent Threat" or Violations Not Premised on Abuse

The VAWA Final Rule generally prohibits eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for assistance, participation or occupancy. (See 24 CFR 5.2005.)

However, the VAWA Final Rule does not prohibit an owner from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. Nor does the VAWA Final Rule prohibit an owner from evicting a tenant if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to property of the owner would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 5.2005(d)(2) and (3).)

In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the covered housing provider must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

(See 24 CFR 5.2003 and 5.2005(d)(2).)

Confidentiality

Any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in strict confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

Employees of the owner (or those within their employ, e.g., contractors) must not have access to the information unless explicitly authorized by the owner for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law (e.g., the information is needed by an employee to provide the VAWA protections to the victim).

The owner must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

a. Requested or consented to in writing by the individual (victim) in a time-limited release;

b. Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or

c. Otherwise required by applicable law.

When communicating with the victim, owners must take precautions to ensure compliance with these confidentiality requirements.

Service Providers

[insert name of housing provider] has extensive relationships with local service providers. **[insert name of housing provider]** staff are available to provide referrals to shelters, counselors, and advocates. These resources are also provided in **[insert name of housing provider]** Annual and 5-Year Plan, Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

Definitions

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

(1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or

(2) Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Dating violence means violence committed by a person:

(1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term “spouse or intimate partner of the victim” includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.
Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
(1) Fear for the person's individual safety or the safety of others; or
(2) Suffer substantial emotional distress.
VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).
Attached:
Legal services and the domestic violence resources for the Metro area
Form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
[insert name of housing provider] VAWA Notice of Occupancy Rights

PART X: CONFLICT OF INTEREST POLICY

16-X.A. OVERVIEW (24 CFR 982.161)

Neither OHA nor any person or entity who is a member of the following classes defined below as "Covered Individuals" may enter into any contract or arrangement in connection with any of OHA's programs in which any of the following covered individuals has any interest, direct or indirect, or in any benefits or payments under a contract (including the interest of an "Immediate Family Member" of such covered individuals) during their tenure with OHA or for one year thereafter:

1. Any present or former Board of Commissioners member or officer of OHA (except a participant commissioner); or
2. All employees of OHA, or an employee's partner or employees' Immediate Family Members; or
3. Any contractor, subcontractor or agent of OHA, who formulates policy or who influences decisions with respect to the programs (except that program participants may be hired as employees of OHA); or
4. Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or
5. Any member of or delegate to the Congress of the United States or resident commissioner of OHA; or

"Immediate Family Member" means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother), or any person related by blood or marriage to any covered individual.

The contract owner/participant certifies and is responsible for assuring that no person or entity has or will have a prohibited interest, at execution of the contract, or at any time during the contract or any other contract term.

If a prohibited interest occurs, the covered individual shall promptly and fully disclose such interest to OHA and HUD.

The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of a contract with OHA or to any benefits which may arise from it.

This policy applies to all traditional voucher programs and all non-traditional local programs created through the MTW demonstration.

16-X.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 Leased Housing Department shall be responsible for reporting to the Director of Human Resources and the Director of Leased Housing 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 Leased Housing for a determination.

It shall be the responsibility of the Director of Leased Housing to ensure that any actions or decisions taken within the Leased Housing 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. 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 her/his 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-X.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 Eligibility Staff All IT Staff All Finance Staff	• *CA Statement of Economic Interests*	Annually
• Contractors Sub-contractors Agents of the Authority	• *CA Statement of Economic Interests* • *OHA Statement of Employee and Familial Participation in Housing Authority Programs*	Upon contract with OHA, annually thereafter Upon contract with OHA, annually thereafter

16-X.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-X.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-X.F. GIFT POLICY

The Leased Housing Department 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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Chapter 17
PROJECT-BASED VOUCHERS
[24 CFR 983.1 through 983.262]

INTRODUCTION

This chapter describes HUD regulations and OHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors that OHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW [24 CFR 983.5]

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, OHA is not required to reduce the number of these units if the amount of authorized units is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether OHA has vouchers available for project-basing [FR Notice 1/18/17].

Additional Project-Based Units [FR Notice 1/18/17]
OHA may project-base an additional 10 percent of its units above the 20 percent program limit, The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap.
For units under a HAP contract that was first executed on or after April 18, 2017, units qualify under this exception if the units

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).
- Are specifically made available to house families that are comprised of or include a
- veteran.
    - Veteran means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined
- in the most recent American Community Survey Five-Year Estimates.

PBV units that house eligible youth receiving FUPY/FYI assistance are also covered by this 10 percent exception authority if the units are under a HAP contract that became effective after December 27, 2020, and if the unit is occupied by an eligible youth receiving FUPY/FYI assistance. FYI TPVs that were awarded under Notice PIH 2019-20 are not part of this exception since PHAs are prohibited from project-basing FYI TPVs. Units added after December 27, 2020, through an amendment of a HAP contract that became effective after December 27, 2020, are eligible for this 10 percent exception authority. In contrast, units added after December 27, 2020, through an amendment of a HAP contract that became effective on or prior to December 27, 2020, are not eligible for this 10 percent exception authority [FR Notice 1/24/22]. See Chapter 19 for policies specific to project-basing FUPY vouchers.

OHA Policy

MTW Activity #12-01 allows OHA to eliminate PBV caps and time limits for MTW vouchers and non-MTW vouchers as permitted

Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]
PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.
In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. In order to be excepted, the unit must meet the following conditions:

- The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date the PHA either issued the RFP or selected the project, the unit either:

OHA Policy

Under MTW Activity #12-02, OHA is authorized to determine the percentage of tenant-based voucher assistance that it is permitted to be project-based and the percentage of project-based assistance allowed in a single development, and criteria for expending funds for physical improvements on those units that differ from the percentage and criteria requirements currently mandated in the 1937 Act and its implementing regulations.

Under MTW Authority, the caps on both the overall number of PBV allocations and the number of PBVs that can be allocated to a single development are eliminated.

PBV assistance may be attached to existing, newly constructed, rehabilitated and also Sponsor Based housing

17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

OHA Policy
OHA policies, including policies and process developed under the MTW demonstration program for the tenant-based voucher administration, may also apply to the PBV program and its participants.

17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7]
Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to

cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the PHA to ensure the owner complies with these requirements.

17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]

OHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, OHA must comply with OHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

PART II: PBV OWNER PROPOSALS

17-II.A. OVERVIEW

With certain exceptions, OHA must describe the procedures for owner submission of PBV proposals and for OHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, OHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. OHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES

OHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan.

OHA may select PBV proposals by either of the following methods.

- OHA request for PBV Proposals. OHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the OHA request. OHA may not limit proposals to a single site or impose restrictions that explicitly or particularly preclude owner submission of proposals for PBV housing on different sites.
- OHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. OHA need not conduct another competition.

Units Selected Non-Competitively [FR Notice 1/18/17 Notice PIH 2017-21; 24 CFR 983.51(b)]

For certain public housing projects where OHA has an ownership interest or control and will spend a minimum amount per unit on rehabilitation or construction, OHA may select a project without following one of the two processes above.

This exception applies when OHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory within five years of the date on which OHA entered into the AHAP or HAP. If OHA is planning rehabilitation or new construction on the project, a minimum threshold of $25,000 per unit in hard costs must be expended.

If OHA plans to replace public housing by attaching PBV assistance to existing housing in which OHA has an ownership interest or control, then the $25,000 per unit minimum threshold does not apply as long as the existing housing substantially complies with HQS/NSPIRE standards.

OHA must include in the administrative plan what work it plans to do on the property or site and how many PBV units will be added to the site.

OHA Policy

OHA will not attach PBVs to projects owned by OHA as described above.

OHA may select projects under MTW authority without engaging in a competitive process, subject to the approval of the OHA Board of Commissioners. In accordance with MTW Activity #06-02, certain project-based voucher proposals may be selected without engaging in a competitive process. Projects selected must be approved by the OHA Board of Commissioners and are subject to HUD's requirements regarding environmental and subsidy layering reviews.

OHA may select projects based on MTW authority waivers granted by HUD as stated in OHA's annual MTW Plan. See www.oakha.org for latest versions of the MTW Annual Plan. Authorization waiver examples include override allocation caps and overall percentage allocation caps, site selection standards, combine PBV contracts for multiple noncontiguous sites, alternative initial rent determinations for PBV units and definition of a project for allocation.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(b) and (c)]

PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of a PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

OHA Policy

OHA reviews projects through a two tiered review process: Threshold Review (Tier One) and Financial/Developer Underwriting (Tier Two).

Standard Threshold Criteria for Oakland Housing Authority for City of Oakland:

Threshold Review (Tier One)

- The development proposed is located within OHA's jurisdiction
- Percent vouchers required
- AMI served – is project mixed income , 100% low income, serving special populations (seniors, disabled, homeless)
- Projects prioritizing integration with the surrounding community

- Evidence of commitment to community engagement with surrounding community
- The subsidy required equates 1:1 to the number of units serving homeless populations.
- Acquisition/ Rehab/ New Construction/ Infill Development

Financial Underwriting (Tier Two)

- All sources are identified
- Evidence of funding gap and total gap
- Determination of need for vouchers or other source
- Guarantees required
- Other requirements of PHA participation (guarantees)
- OHA participation in fees
- Services needed and/or provided
- Proposed per unit Total Development Cost

Developer Underwriting (Tier Two)

- Readiness
- Developer experience
- Property management experience – provide management plan - evidence of existing portfolio, proposed management plan
- Service provider experience
- MBE/ DBE/ Section 3 participation

NOFA/RFP Process for OHA Award of Project Based Vouchers

OHA permits competitive processes from the following sources for Project Based Voucher award through the competitive HUD requirement:

- OHA solicitation
- City of Oakland solicitation
- County of Alameda solicitation
- TCAC and CDLAC solicitation processes

When OHA issues its own solicitation, it should reflect all the criteria as outlined in the Two-Tier review process.

OHA will advertise its solicitation in a local news source of general circulation and will also utilize non-English language publications.

In addition, OHA will post the solicitation and proposal submission on its website (www.oakha.org).

OHA will publish its advertisement for at least one day per week for a minimum of one week. The advertisement will estimate the number of vouchers available.
The advertisement will contain a statement that participation requires compliance with all Federal, State, and local requirements, including Fair Housing and Equal Opportunity requirements, NEPA, HQS/NSPIRE standards, and neighborhood standards, etc.. Federal Labor Standards provisions may be applicable.

In order for the proposal to be considered, the owner must submit a proposal to OHA by the published deadline, and the proposal must respond to all requirements as outlined in the solicitation. Incomplete proposals will not be reviewed.

OHA will rate and rank proposals using but not limited to the criteria outlined in the Two-Tier Review process.

OHA selection of projects under MTW authority without engaging in a competitive process

Under MTW Activity #06-02, OHA may select projects under MTW authority without engaging in a competitive process. Projects that may be selected for project-based voucher assistance without engaging in a competitive process include:

- Properties owned directly or indirectly by OHA that are not Public Housing;
- OHA Public Housing modernization activities including the replacement on a one for one basis, of public housing units that are being permanently removed from the Public Housing program inventory.
- Projects selected without engaging in a competitive process must be approved by the OHA Board of Commissioners.

OHA-owned Units [24 CFR 983.51(e) and 983.59, Notice PIH 2015-05, and FR Notice 1/18/17]

OHA owned units may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the OHA-owned units were appropriately selected based on the selection procedures specified in the OHA administrative plan. If OHA selects a proposal for housing that is owned or controlled by OHA, OHA must identify the entity that will review OHA's proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of OHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by OHA and a HUD-approved independent entity. The initial contract rent must be approved by the independent entity. In addition, housing quality standards inspections must be conducted by the independent entity or a third party vendor contracted by the independent entity.

The independent entity that performs these program services may be the unit of general local government for OHA jurisdiction (unless OHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

OHA Policy

OHA will use an independent entity approved by HUD, to perform required rent determinations and housing quality standards inspections in PBV program units where OHA has an identity of interest in the property.

A state-certified appraiser's market rent study used to determine initial contract rents for PBV program units may be based on a geographical area covering multiple sites located within that geographical area.

OHA will only compensate the independent entity from OHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). OHA may not use other program receipts to compensate the independent entity for their services. OHA's independent entity may not charge the family any fee for the appraisal or the services provided by the independent entity.

PHA Notice of Owner Selection [24 CFR 983.51(d)]

OHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

OHA Policy

OHA will give prompt written notification to the selected owner of a PBV program award. The award notice will included the number of vouchers awarded by bedroom size and state a deadline by which the project owner must enter into an agreement to enter into HAP or a HAP contract to provide PBV assistance for the awarded units in the project. OHA will also notify in writing all owners that submitted proposals that were not selected.

In addition, OHA will publish public notice of the selection of PBV proposals on the OHA website.. The announcement will include the name of the owner/project and the number of project-based vouchers that were awarded for the PBV program. OHA will post the public notice of selection of PBV proposals on the OHA website for a period of not less than 30-days.

17-II.C. HOUSING TYPE [24 CFR 983.52]

OHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with HQS/NSPIRE standards. Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

OHA will decide what housing type, new construction, rehabilitation or existing housing, will be used to develop project-based housing. OHA's choice of housing type will be reflected in its solicitation for proposals.

17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Housing Types [24 CFR 983.53]

OHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; and manufactured homes. In addition, the PHA may not attach or pay PBV assistance for a unit occupied by an owner and the PHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

Subsidized Housing [24 CFR 983.54]

OHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

(a) A public housing dwelling unit;
(b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
(c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
(d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
(e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z–1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
(f) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);
(g) A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);
(h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
(i) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);
(j) A Section 101 rent supplement project (12 U.S.C. 1701s);
(k) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) (e.g. , a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 et seq.);

(l) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, "housing subsidy" does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

OHA Policy (MTW)

OHA may allocate PBV assistance to the Special Housing types described in Chapter 15, based on HUD approved MTW activities. These special housing types include single room occupancy (SRO), group homes and shared housing. The MTW activity may alter program requirements by imposing additional participant obligations such as transfer restrictions, participation in available service programs, graduation requirements or term limits as described in the activity or specific program guidelines. Service providers may directly refer applicants to OHA for admission to targeted service enriched program units and maintain a waitlist for referral of future program applicants.

Additionally, to enhance the accessibility and the effectiveness of programs serving a special needs population, OHA may attach PBV assistance to units developed with Housing Opportunities of Persons with AIDS (HOPWA) or Mental Health Services Act (MHSA) Housing Program funding as long as the HOPWA or MHSA program funding does not duplicate any form of rental assistance for the family. PBV assistance awarded to HOPWA or MHSA program units may also be administered as Sponsor Based Housing if selected in response to an OHA invitation for proposals for Sponsor Based Housing.

17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, FR Notice 2/28/20]

OHA may provide PBV assistance only in accordance with HUD subsidy layering regulations and other requirements.

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

Subsidy layering requirements do not apply to existing housing. A further subsidy layering review is not required for new construction or rehabilitation if HUD's designee has conducted a review that included a review of PBV assistance in accordance with the PBV subsidy layering guidelines.

OHA must submit the necessary documentation to HUD for a subsidy layering review.

Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs) noted above, OHA may not enter into an agreement to enter into a HAP contract or a

HAP contract until HUD, or an independent entity approved by HUD a HUD-approved housing credit agency (HCA), has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the Federal Register notice published February 28, 2020.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT

25 Percent per Project Cap [24 CFR 983.56]

In general, OHA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17, Notice PIH 2017-21; FR Notice 1/24/22]

As of April 18, 2017, units are not counted against the 25 percent or 25-unit per project cap if:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
  - If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services. Projects where these caps were implemented prior to HOTMA may continue to use the former exemptions and may renew their HAP contracts under the old requirements, unless the PHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family’s eligibility for continued assistance in the project.

OHA Policy

Under MTW Authority, the caps on both the overall number of PBV allocations and the number of PBVs that can be allocated to a single development are eliminated. MTW Activity #12-01 allows OHA to eliminate PBV caps and time limits. authorizes OHA to determine the percentage of tenant-based voucher assistance that it is permitted to project-base and the percentage of project-based assistance allowed in a single development, and criteria for expending funds for physical improvements on those units that differ from the percentage and criteria requirements currently mandated in the 1937 Act and its implementing regulations.

Supportive Services

OHA must include in the OHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. The project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

OHA Policy

Excepted units will be limited to units for elderly families.

Projects not Subject to a Project Cap [FR Notice 1/18/17; Notice 2017-21]

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance. To qualify for the exception, the unit must:

- Be covered by a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date OHA either issued the RFP under which the project was selected or the PHA selected the project without competition, the unit met at least one of the two following conditions:
  - The unit received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for the Elderly (Section 202), Housing for Persons with disabilities (Section 811), the Rental Supplement program,
  - The unit was subject to a rent restriction as a result of one of the following HUD loans or insurance programs: Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for the Elderly (Section 202), or Housing for Persons with Disabilities (Section 811)

Units that were previously receiving PBV assistance are not covered by the exception. Both existing and rehabilitation units are eligible for this exception. Newly constructed units qualify if they meet the definition of *replacement unit* described in FR Notice 1/18/17.

Promoting Partially-Assisted Projects [24 CFR 983.56(c)]

OHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

OHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building. OHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-project cap of less than 25 units or 25 percent of units.

OHA Policy (MTW)

Under MTW authority, Activity #12-01, will not limit the number of total number of dwelling units in a project that will receive PBV assistance during the term of the PBV HAP contract and may provide PBV assistance for up to 100% of units within a project.

17-II.G. SITE SELECTION STANDARDS

Compliance with PBV Goals, Civil Rights Requirements, and HQS/NSPIRE Site Standards [24 CFR 983.57(b)]

OHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless OHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the OHA administrative plan.

In addition, prior to selecting a proposal, OHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS/NSPIRE site and neighborhood standards at 24 CFR 982.401(l).

OHA Policy

Under MTW authority, OHA will apply the following Site and Neighborhood Standards for the award of PBV assistance: OHA will comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and implementing regulations thereto, in determining the location of newly constructed or substantially rehabilitated unit-based housing assistance.

OHA shall certify to HUD that HUD site and neighborhood selection requirements have been met; provided, however, that in lieu of the Site and Neighborhood Standards currently set forth in 24 CFR Section 941.202(b)-(d) and in 24 CFR Section 983.6, OHA will comply with the following requirements:

- Units may be located in OHA's jurisdiction, including within, but not limited to, the following types of urban areas: (i) an area of revitalization that has been designated as such by the City of Oakland, including Redevelopment Areas and Enhanced Enterprise Communities, (ii) an area where public housing units were previously constructed and were demolished, (iii) a racially or economically impacted area where the assisted units are part of an OHA strategy to preserve existing affordable housing, (iv) an area where the Authority is undertaking a HOPE VI or other HUD-funded, master-planned development, (v) an area where a needs analysis indicates that subsidized housing represents a low percentage of the total number of housing units, or, (vi) an area with a low concentration of public housing units where existing public housing units are being relocated.
- Conduct a housing needs analysis indicating that there is a real need for the housing in the area; and
- When project-based assistance will be used to develop or substantially rehabilitate six or more public housing units, OHA will: (i) consult with public housing residents through appropriate resident organizations and representative community groups in the vicinity of the subject property during the planning; (ii) advise current residents of the subject properties ("Residents") and public housing residents, by letter to resident organizations and by public meeting, of OHA's

17-II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58, FR Notice 11/24/08]

OHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The responsible entity is responsible for performing the federal environmental review under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). OHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

OHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

OHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The PHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

PART III: DWELLING UNITS

17-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

17-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]

The HQS/NSPIRE standards for the tenant-based program, including those for special housing types, generally apply to the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

Lead-based Paint [24 CFR 983.101(c)]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, and 40 CFR 745.227 apply to the PBV program.

17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. OHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

17-III.D. INSPECTING UNITS

Pre-selection Inspection [24 CFR 983.103(a)]

OHA must examine the proposed site before the proposal selection date.

Inspection of Existing Units

If the units to be assisted already exist, OHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS/NSPIRE standards. To qualify as existing housing, units must substantially comply with HQS/NSPIRE on

the proposal selection date. However, OHA may not execute the HAP contract until the units fully comply with HQS/NSPIRE standards.

Pre-HAP Contract Inspections [24 CFR 983.103(b), FR Notice 1/18/17, and Notice PIH 2017-20]

OHA must inspect each contract unit before execution of the HAP contract. OHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS unless OHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions.

OHA Policy

OHA may enter into a HAP contract for units that fail the initial HQS/NSPIRE inspection as a result of only non-life-threatening conditions.

Turnover Inspections [24 CFR 983.103(c)]

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS/NSPIRE standards.

Annual/Biennial Inspections [24 CFR 983.103(d), FR Notice 6/25/14]

At least once every 24 months during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS/ NSPIRE standards. Turnover inspections are not counted toward meeting this inspection requirement. OHA also has the option in certain mixed finance properties to rely on alternative inspections conducted at least triennially.

OHA Policy

Under MTW Authority, OHA may elect to utilize HQS inspection protocols developed under MTW authority for tenant-based voucher assistance in lieu of the inspection requirements detailed above.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

Other Inspections [24 CFR 983.103(e)]

OHA must inspect contract units whenever needed to determine that the contract units comply with HQS/NSPIRE standards and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

OHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS /NSPIRE violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS/ NSPIRE Standards.
In conducting PHA supervisory quality control HQS/NSPIRE inspections,OHA should include a representative sample of both tenant-based and project-based units.

Inspecting PHA-owned Units [24 CFR 983.103(f)]

In the case of OHA-owned units, the inspections must be performed by an independent agency designated by OHA and approved by HUD. The independent entity must furnish a copy of each inspection report to OHA and to the HUD field office where the project is located. OHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

17-IV.A. OVERVIEW [24 CFR 983.151]

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT

In order to offer PBV assistance in rehabilitated or newly constructed units, OHA must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. OHA may not enter into an Agreement if construction or rehabilitation has started after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and OHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, OHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

OHA Policy

Under MTW Authority, OHA may modify the terms and content of the agreement to reflect conditions granted under MTW authority. OHA may also create its own Project-Based Voucher Program Agreement and Contract to be used for PBV assistance awarded as Sponsor Based Housing.

Content of the Agreement [24 CFR 983.152(d)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

1. Site and the location of the contract units;
2. Number of contract units by area (size) and number of bedrooms and bathrooms;
3. Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
4. Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
5. An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
6. Estimated initial rents to owner for the contract units;

7. Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
8. Any additional requirements for quality, architecture, or design over and above HQS/ NSPIRE standards.

17-IV.C. CONDUCT OF DEVELOPMENT WORK

Labor Standards [24 CFR 983.154(b)]

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

Equal Opportunity [24 CFR 983.154(c)]

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

Owner Disclosure [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

17-IV.D. COMPLETION OF HOUSING

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

Evidence of Completion [24 CFR 983.155(b)]

At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and

- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At OHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

OHA Policy

OHA requires a (temporary) certificate of occupancy from the City of Oakland as evidence of completion prior to entering into a HAP contract

OHA Acceptance of Completed Units [24 CFR 983.156]

Upon receipt of a (temporary) certificate of occupancy, OHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS/ NSPIRE standards and any additional requirements imposed under the Agreement. OHA must also determine if the owner has submitted all required evidence of completion. If the work has not been completed in accordance with the Agreement, OHA must not enter into the HAP contract. If OHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, OHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

17-V.A. OVERVIEW

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

OHA Policy

Under MTW Authority, OHA may modify the terms and content of the HAP contract to reflect conditions granted under MTW authority. OHA may also create its own Project-Based Voucher Program Contract to be used for PBV assistance awarded as Sponsor Based Housing.

17-V.B. HAP CONTRACT REQUIREMENTS

Contract Information [24 CFR 983.203, FR Notice 11/24/08]

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, and any other information necessary to clearly identify the site and the building;
- The number of contract units in each project, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will be set-aside for occupancy by qualifying families(e.g., senior, disabled, HOPWA, MHSA); and
- The initial rent to owner for the first 12 months of the HAP contract term.
- OHA administrative plan chapter 17
- Owner's certification of and notification of completion
- Certificate of occupancy
- Certification of completion from inspecting architect
- Evidence of site ownership

- Site management agreement
- HQS/NSPIRE standards inspection report for every unit covered by the HAP contract
- Site-based waiting list management plan – if applicableS
- ample residential lease agreement and HUD PBV tenancy Addendum (MTW version)
- Consent to assignment of HAP contract
- Renewal agreement – if applicable

Execution of the HAP Contract [24 CFR 983.204]

OHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the HQS/NSPIRE standards.

Term of HAP Contract [24 CFR 983.205; FR Notice 1/18/17]

OHA may enter into a HAP contract with an owner for an initial term of no less than one (1) year and no more than twenty (20) years. Additionally, for any PBV HAP contract that is still within the initial term, OHA and the owner may mutually agree to extend the contract for up to the maximum initial term of 20 years.

OHA may further extend the HAP contract beyond 20 years from the end of the initial term as long as the following conditions are met:

a) OHA must determine such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities;
b) This determination must be made no earlier than 24 months prior to the expiration of the HAP contract;
c) The term of the new extension may not exceed 20 years.

The maximum combined terms of the HAP contract may not exceed 40 years.

OHA Policy

The term of a PBV HAP contract will be negotiated with the owner on a case-by-case basis. The HAP contract will include language noting that the funding of the contract is subject to the availability of Appropriations. OHA may enter into a new PBV HAP contract with an owner with an initial term of up to twenty (20) years and for HAP contracts that are still in the initial term may extend the initial term up to a maximum initial term of 20 years by mutual consent, and then may subsequently agree to extend the contract for up to 20 years. The maximum term of the HAP contract in that instance (initial term and subsequent extensions) may not exceed 40 years.

HAP Contract Renewal Agreement

OHA may enter into a renewal agreement with the owner at the time it enters into the initial agreement for a housing assistance payment contract or at any time thereafter that is before the expiration of the housing assistance payment contract. A renewal agreement may commit an extension for a renewal term of up to twenty (20) years or the maximum allowed in accordance with federal regulations if it is greater than 20 years. A renewal

agreement will include language noting that the funding of the contract renewal is subject to the availability of Federal Appropriations.

Termination by PHA [24 CFR 983.205(c); FR Notice 1/18/17]
The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that OHA first take all cost-saving measures prior to make payments under existing PBV HAP contracts.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, OHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

Termination by Owner [24 CFR 983.205(d)]
If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the PHA. In this case, families living in the contract units must be offered tenant-based assistance.

Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206; FR Notice 1/18/17; Notice PIH 2017-21]
Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify OHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require. For families who wish to remain at the property, the HCV tenant-based assistance would not begin until the owner's required notice period ends.

Upon termination or expiration of the contract without extension, an assisted family may elect to remain in its unit and use the assistance previously provided under the contract, as long as the unit meets HUD's housing quality standards and the rent for the unit is reasonable. In such a circumstance, the family may choose to move or to remain in the unit. If the family remains, it will pay its required share of the rent in addition to the amount, if any, by which the gross rent exceeds the applicable payment standard. A family that remains in its unit with continued tenant-based HCV assistance must pay the total tenant payment (determined under 24 CFR part 5 subpart F) and any additional amount by which the unit rent exceeds the applicable payment standard.

Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to OHA HCV tenant-based program, and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income. The family does not count toward OHA's income-targeting requirements at 24 CFR §982.201(b)(2)(i).

Effective date of HCV HAP and Family Leases

The transition from PBV HAP units to HCV HAP units will require OHA and owner toplan to assure continued payments for families under lease and continued payments to the owner of units under HAP. The following requirements apply:

(1) OHA may execute an HCV HAP contract before the PBV HAP contract terminates, but the HCV HAP contract may not be effective prior to the PBV contract termination or expiration date.

(2) OHA may not commence the tenant-based HCV housing assistance payment to an owner until the HCV tenant-based HAP contract has been executed.

(3) The HCV HAP contract may not be executed before OHA approves the assisted tenancy in accordance with 982.305. An HCV HAP contract for a family must be executed no later than 60 calendar days from the start of the family's lease. As long as the HCV HAP contract is executed during the 60-day grace period, once it has been executed, OHA may pay the owner retroactively to the start date of the family's lease term.

(4) If the HCV HAP contract has a different rent than did the PBV HAP contract, and the new rent is determined by OHA to be reasonable, then OHA will use the new gross rent to calculate the family's HCV HAP going forward. The family will be responsible for paying the new family rent to owner starting from the effective date of the HCV HAP contract.

Remedies for HQS/NSPIRE Violations [24 CFR 983.208(b)]

OHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the PHA determines that a contract does not comply with HQS, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

> **OHA Policy**
> OHA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

17-V.C. AMENDMENTS TO THE HAP CONTRACT

Substitution of Contract Units [24 CFR 983.206(a) as amended by MTW]

At OHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, OHA must inspect the proposed unit and determine the reasonable rent for the unit.

OHA Policy (MTW)

OHA may substitute (float) a project-based-voucher contract unit for a different unit in the projects at any time during the initial term or any extension term of the HAP contract. The substituted unit does not have to be a unit with the same number of bedrooms.

Addition of Contract Units [24 CFR 983.207(b) as amended by MTW]

OHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, OHA must submit to the local field office information outlined in FR Notice 1/18/17. OHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

OHA Policy

Under MTW authority, OHA is not subject to program or project limits.

OHA will consider adding contract units to the HAP contract when OHA determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

- The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and
- Voucher holders are having difficulty finding units that meet program requirements.

Under MTW authority, the HAP contract may be amended at any time during the initial term of the HAP contract, or any renewal term of the HAP contract.

Suspend PBV Awarded Contract Units for applicants with Tenant-Based Assistance

At the option of the project owner and tenant, an applicant that has OHA administered tenant-based Section 8 assistance may utilize their tenant-based assistance (e.g. HCV, TPV, VASH, Mainstream etc.) in the PBV unit. OHA will suspend the PBV award to the unit in the project's HAP contract until the unit becomes available for the next eligible applicant during the term of the HAP contract or any approved extensions.

17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b) and 983.302(e)]

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and the family does not own or have any interest in the contract unit. (does not apply to family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

17-V.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with OHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

OHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS/NSPIRE Standards.

OHA Policy

OHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. OHA will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

Vacancy Payments [24 CFR 983.352(b)]

At the discretion of OHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by OHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

OHA Policy

OHA will decide on a case-by-case basis if OHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the basis of the vacancy payment and the period for which the owner will qualify for these payments.

The amount of vacancy loss payments may not exceed two full calendar months after the move out month. The owner may also retain the HAP payment for the entire month in which the family moved out.

PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE

OHA may select families for the PBV program from those who are participants in the tenant-based voucher program and from those who have applied for admission to the voucher program.

For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance.

For all others, eligibility for admission must be determined at the commencement of PBV assistance.

OHA Policy

OHA may select families for the PBV program from those who are:

1. Participants in OHA's tenant-based voucher program,
2. Residing in the proposed PBV contract unit on the date the proposal is awarded,
3. From those who have applied for admission to OHA's tenant-based voucher program,
4. From those who have applied for housing at a PBV site where a separate site-based waiting list has been established specifically for the tenanting of units within the development.
5. From those who are in-place public housing conversion families in good standing.
6. Graduates from an OHA short-term transitional housing program with supportive services, including PACT, Building Bridges, Sponsor Based Housing Assistance Program (SBHAP) and any other approved program.

For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be re-determined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and OHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of

family information regarding income, expenses, and family composition [24 CFR 5.230]. OHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

OHA Policy
A family selected from an owner administered site-based waiting list must be referred to OHA for determination of the family's eligibility for the PBV program. To minimize duplication of the applicant qualification process, if a family's income was verified by the owner as a requirement of participation in another low-income program committed to the project, OHA may use copies of the family information regarding income, expenses and family composition including certification of 3rd party verifications collected by the owner, for determination of family eligibility for the PBV program. **Any family documentation received from a PBV site owner must be dated within 120 days of a family's application date.** OHA may elect to re-verify any information as needed. Families selected for the PBV program must meet all OHA's screening criteria (e.g., income, criminal background, etc.) prior to receiving a project-based assistance.

In-Place Families
An eligible family residing in a proposed PBV contract unit on the date the proposal is awarded by the PHA is considered an "in-place family." These families are afforded protection from displacement under the PBV program. This regulatory protection from displacement does not apply to families that are not eligible to participate in the PBV program.

OHA Policy
If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is awarded, the in-place family must be referred to OHA for determination of eligibility

The owner may:

- Relocate the family to an appropriately sized PBV unit within the development,
- Place the family on the PBV site-based waiting list for an appropriate sized unit.

In accordance with MTW Activity #10-05, OHA, a landlord, or a management agent may allow an exception to this policy and admit a family in the wrong sized unit if the owner agrees to accept a PBV contract rent that does not exceed OHA subsidy (voucher payment) standard approved for the in-place family. (see policy 17-VII.C. MOVES)

Public Housing Conversions
In-place public housing conversion families are continuously assisted applicants since the family is currently receiving assistance under a 1937 Housing Act program (24 CFR 982.201(d)(1)). The family is therefore not subject to the new admissions criteria for program eligibility and admission to the Section 8 PBV program.

Under MTW authority, an in-place public housing conversion family may be admitted as a Section 8 PBV program participant. If an in-place public housing conversion family is admitted directly to the PBV program, the family is exempt from the 12 month minimum stay requirement and may immediately request to move with continued assistance under the Section 8 MTW Housing Choice Voucher program.

In-place public housing conversion families may also be admitted by Special Admission to the Housing Choice Voucher program if HUD has awarded tenant protection funding for specifically-named families living in specified units (Section 4-III.B.).

OHA Policy

An in-place public housing conversion family that is not in an appropriately sized unit when the development is selected for conversion will be admitted to the Section 8 program with HUD awarded tenant protection funding.

A family occupying a unit awarded PBV assistance (see 17-V.C. Suspend PBV Awarded Contract Units for applicants with Tenant-Based Assistance suspended), with a tenant-based assistance is subject to all policies applicable to a PBV assisted family occupying a wrong size unit, based on the PHA's subsidy standards for PBV program units, or a unit with accessibility features that the family does not require (See Section 17-VII,C – Moves).

The family will be provided 120 days to utilize the Tenant Protection Voucher (TPV) in an open market unit. If the TPV is not utilized during the maximum search period the families assistance will convert to Project Based Voucher program rules and the unused tenant based voucher will be forfeited. Extensions for use of the tenantprotection voucher will be based on a the family's written request and may include requests for reasonable accommodations but shall not exceed a maximum cumulative total of 180 days.

Transitional/Conditional Housing Programs

Under MTW Authority, OHA may develop and adopt new short-term transitional housing programs in partnership with supportive services provided by local community-based organizations or other local government agencies. These programs, which include comprehensive supportive services, operate under a Memorandum of Understanding (MOU) executed between OHA and third party service providers. OHA may administer these units under the LHAP Program and successful participants may be eligible to "graduate" and transfer to OHA's Public Housing, Housing Choice Voucher or the Project-based Voucher programs, subject to funding availability and availability of an appropriate unit size for the family.

Neighborhood Orientation Workshop (MTW)

The Neighborhood Orientation Workshop is an MTW initiative which is intended to provide new Section 8 Program participants with access to information needed to become successful tenants and responsible members of their community. OHA will utilize a third party contractor to conduct the workshops. The third party contractor will be selected based on their knowledge of the local market area and their expertise in marketing, outreach, communication, popular education, and other successful strategies for working with low-income households and individuals. Upon completion, attendees will receive a certificate of completion.

OHA Policy

The Head of Household in a Project Based Voucher program unit (including all public housing conversion families), must attend a Neighborhood Orientation Workshop, as a a part of the Section 8 briefing process (see Section 5-I.B.) prior to being issued an HCV tenant-based voucher. All other responsible adult family members in the applicant family household will be encouraged, but are not be required to attend a workshop session. A Project-Based Voucher program or Public Housing conversion family will not be allowed to move with tenant based HCV assistance until the Head of Household has attended a Neighborhood Orientation Workshop.

An exception to this policy will be granted if the participant family has attended a Neighborhood Orientation Workshop (or comparable OHA workshop) within the last five (5) years.
Other exceptions will be considered on a case-by-case basis subject to the approval by the Director of Leased Housing and for circumstances involving a reasonable accommodation for a person with a disability, upon approval by the Reasonable Accommodation Compliance Committee.

17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c); MTW Annual Plan]

OHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. OHA may also merge the PBV waiting list with a waiting list for other assisted housing programs. If OHA chooses to offer a separate waiting list for PBV assistance, it must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If OHA decides to establish a separate PBV waiting list, it may use a single waiting list for the whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

OHA Policy

Under MTW Activity #06-01, OHA may authorize owner administered site-based waiting lists for individual buildings, projects or group of projects that receive PBV assistance. The PBV waiting list may be combined with the a site-based waiting list for public housing units, other affordable non-section 8 units, or units set aside for special needs populations in the development. The waiting list may come from outreach efforts conducted by the property owner/manager. In creating the PBV site-based waiting list, the owner/manager must comply with OHA's marketing outreach policies (see Sections 4-II.C and 4-II.D.) when advertising the availability of project-based voucher assisted units. The owner must notify OHA in advance of reopening the waiting list. OHA will post notification of the opening of a site-based waiting list used for tenanting PBV units, on the OHA web-site.

A property owner/manager may, but is not required to directly notify families on the OHA HCV tenant-based voucher waiting list of the opening of a PBV site-based waiting list. If requested, OHA will provide the owner/manager with a mailing list of families currently on the OHA HCV tenant-based voucher waiting list.

- A family that is on the OHA HCV tenant-based voucher waiting list may apply in response to owner outreach efforts and be placed on a PBV site-based waiting list.
- A family's placement on one or more PBV site-based waiting lists does not impact the family's position on the OHA HCV tenant-based voucher waiting list.
- A family's refusal to accept a PBV unit, owner denial, or removal from a project-based voucher site-based waiting list does not jeopardized the family's position on the OHA tenant-based voucher waiting list, see also 17-VI.E.

A family may only be removed from the OHA tenant-based voucher waiting list if they are selected and housed under the OHA project-based voucher program.

Owner developers awarded project-based voucher units must submit the following plans to OHA for review and approval prior to execution of an AHAP or HAP contract:

- Marketing Plan to describe marketing and outreach activities;
- Waiting List Management Plan which includes information related to accepting applications, random lottery procedures, procedures for rank order assignment and record keeping;

In approving the Waiting List and Tenant Selection Plans, OHA may require preferences up to and including an absolute preference for a public housing or Section 8 family that needs to be relocated. A family may need to be relocated to another PBV unit under certain circumstances such as:

- Over-Housed or Under-Housed
- Current unit removed from PBV Contract
- High-Priority Relocation where there is a verified medical problems of a serious or life-threatening nature or a verified threat of physical harm or criminal activity specifically directed to the family
- VAWA emergency transfer requests
- Reasonable Accommodation

17-VI.D. SELECTION FROM THE WAITING LIST AND DETERMINING UNIT SIZE

Applicants who will occupy units with PBV assistance must be selected from the applicable waiting list. OHA may establish selection criteria or preferences for occupancy of particular PBV units. OHA may place families referred by the PBV owner on its PBV waiting list.

Income Targeting [24 CFR 983.251(c)(6)]
At least 75 percent of the families admitted to OHA's tenant-based and project-based voucher programs during the fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

Units with Accessibility Features [24 CFR 983.251(c)(7)]
When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, OHA must first refer families who require such features to the owner.

OHA Policy

Applicants who will occupy units with PBV assistance must be selected from:

- A PBV owner administered site-based waiting lists authorized by OHA, or
- OHA's HCV tenant based voucher waiting list.

OHA may establish selection criteria or preferences for occupancy of particular PBV units. Under MTW authority with approval from the Executive Director on a case by case basis, OHA may 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 eligible for the relevant program. OHA may also allow participants of local, non-traditional programs to transfer to the PBV program provided that the family has met the program guidelines specified in the local program. This policy is authorized under Attachment C, Section D.4. of the Amended and Restated Moving to Work Agreement.

Preferences [24 CFR 983.251(d), FR Notice 11/24/08]

OHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. OHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B

OHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the MTW Annual Plan. OHA may not, however, grant a preference to a person with a specific disability. [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If OHA has projects with "excepted units" for elderly families or supportive services, OHA must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

OHA Policy

A PBV site-based waiting list may use the same selection preferences that are used by OHA for the HCV tenant-based voucher program or may establish selection criteria or preferences independently for occupancy of particular units in a PBV development.

OHA may also refer a family to an OHA contracted PBV development where the owner is authorized to administer a PBV sited-based waiting list. The owner must provide the family with absolute preference for the next available appropriately sized PBV assisted unit. (See Section 17-VII.C (Moves- Overcrowded, Under-Occupied, and Accessible Units). A family granted an absolute preference to move is still subject to owner

screening requirements and offer of a PBV assisted unit (see 17-VI.E. OFFER OF PBV ASSISTANCE).

PBV Site-Based Waiting List Oversight and Auditing

OHA Policy

OHA will perform or witness any random lottery and/or rank order assignments the owner uses to create or when reopening a PBV site-based waiting list. A hard copy original (or a read-only electronic version) of the site-based waiting list will be kept on file at the OHA office.

OHA will audit site-based waiting list after the initial lease up and any time during the duration of the HAP contract. OHA will review waiting list management and tenant selections to insure that written procedures and preference were followed in selecting tenants for PBV assisted units.

Determining Family Unit Size for Project Based Voucher Assisted Units (24 CFR 983.253)

The contract unit leased to each family must be appropriate for the size of the family under OHA's subsidy standard.

OHA Policy

Under MTW activity #11-01, OHA may establish a separate Project Based Voucher Program occupancy standard table that will determine the appropriate number of bedrooms needed for families of different sizes and compositions to be consistent with the occupancy standards required by other state or locally-administered funding sources in a development. . PBV program occupancy standards may differ from the occupancy standards use for determining the voucher size for applicant and participant families in the tenant based, Housing Choice Voucher Program (5-II.B.). However, if separate PBV occupancy standard has not been established prior to the execution of the Housing Assistance Payment contract, the occupancy standard will be the same as the tenant-based subsidy standard as described in this Administrative Plan Chapter 5, section II.B)

When PBV assistance is attached to units developed or rehabilitated with other state or locally administered affordable housing funds, the occupancy standards applicable to those other programs may differ from the subsidy standard used for the PBV program.

This creates certain circumstances whereby a family of a particular size or composition, will qualify for a specific unit that was developed with Tax Credit (LIHTC) or HOME program funding, but is not eligible for PBV assistance in that same sized unit. OHA may adjust the applicable PBV program subsidy standard at certain PBV developments or for the PBV program in its entirety to increase access and expand housing opportunities for participants.

For Project Based Voucher units, the occupancy standard will be the same as the tenant-based subsidy standard unless a separate Project-Based Voucher program occupancy standard table has been established prior to the execution of a HAP contract, based on MTW activity #11-01.

When a family's subsidy standard becomes less than the PBV unit size during the course of the tenancy, either as a result of public housing disposition or a change in household composition, MTW Activity #10-05 allows OHA to opt to accept a lower HAP to house families in units when there are no families on the waitlist that qualify for the size units that are available under. The landlord or management agent may accept a lower HAP based on the appropriate number of bedrooms for the family as opposed to the actual number of bedrooms in the unit. The following requirements apply when OHA determines the family unit size:

- The PBV program occupancy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The PBV program occupancy standards must be consistent with space requirements under the housing quality standards.
- The PBV program occupancy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family member who is temporarily away from the home to attend school is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by OHA to reside in the unit, see 3-I.M.) must be counted in determining the family unit size.
- Live-in aides will be allocated a separate bedroom.

If the family moves from the PBV assisted unit and converts to the HCV tenant based program assistance, the family's HCV voucher size will be based on the applicable HCV program subsidy standard (see 5-II.B.).

17-VI.E. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

OHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

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

Disapproval by Landlord [24 CFR 983.251(e)(2)]

If a PBV owner rejects a family for admission to the owner's units, such rejection will not affect the family's:

- Position on OHA tenant-based voucher waiting list
- Occupancy in their current PBV assisted unit

Acceptance of Offer [24 CFR 983.252]
A family that is also on OHA HCV tenant-based voucher waiting list will be removed from the HCV list if they accept an offer and are housed under the OHA project-based voucher program.

Family Briefing [24 CFR 983.252]
When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

Persons with Disabilities
If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency
OHA will take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

17-VI.F. OWNER SELECTION OF TENANTS

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease.

Leasing
During the term of the HAP contract, the contract unit leased to the family must be the appropriate size unit for the size of the family, based on OHA's subsidy standards. Exceptions will be considered on a case by case basis for in-place families at initial lease up (see 17-VI.B. In-Place Families).

Filling Vacancies
The owner must promptly notify OHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, OHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. OHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy. The unit must be filled by a referral from OHA or the next eligible family on the site-based waiting list.

> **OHA Policy**
> The owner must notify OHA in writing (mail, fax, or e-mail) within 10 business days of learning about any vacancy or expected vacancy.

OHA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

An applicant that has OHA administered tenant-based Section 8 assistance may utilize their tenant-based assistance (e.g. HCV, VASH, Mainstream etc.) in the PBV unit. OHA will suspend the PBV award to the unit in the project's HAP contract until the unit becomes available for the next eligible applicant during the term of the HAP contract or any approved extensions. (see 17-V.C. Suspending Contract Units for applicants with Tenant-Based Assistance)

Under the circumstances described in Section 17-VII.C (Moves- Overcrowded, Under-Occupied, and Accessible Units), OHA may refer a family to an OHA PBV development where the owner is authorized to administer a PBV sited-based waiting list. The owner must provide the family with absolute preference for the next available appropriately sized PBV assisted unit. However, a family granted an absolute preference to move is still subject to owner screening requirements and offer of a PBV assisted unit (see 17-VI.E. OFFER OF PBV ASSISTANCE).

Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

OHA Policy

If any contract units have been vacant for 120 days, OHA may give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. A reduction in the number of HAP contract units will be reviewed by OHA on a case by case basis. A unit may be allowed to remain vacant for over 120 days subject to good faith efforts by the owner to fill the vacancy. If OHA decides to remove a unit by amending the HAP contract, OHA will provide the notice to the owner within 10 business days, after the 120th day of vacancy. The amendment to the HAP contract will be effective on the 1st day of the month following the date of OHA's notice.

OHA will take steps to enforce the contract if it appears that the owner is maintaining vacancies intentionally to get out of contact obligations.

17-VI.G. TENANT SCREENING [24 CFR 983.255]

OHA Responsibility

OHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, OHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

OHA Policy

OHA will not conduct screening to determine a PBV applicant family's suitability for tenancy. OHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by OHA) of the family's current landlord and any prior landlords.

In addition, OHA may offer the owner other information OHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. OHA must provide applicant families a description of OHA policy on providing information to owners, and OHA must give the same types of information to all owners.

OHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking, except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

OHA Policy

OHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS/NSPIRE inspection or before. OHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc. OHA follows the city of Oakland's Ronald V. Dellums and Simarashe Sherry Fair Chance Access to Housing Ordinance No. 13581 C.M.S. (O.M.C. 8.25) and limits the criminal background screening to:

- Persons subject to lifetime sex offender registration (42 U.S.C. Sec. 13663(a))
- Persons convicted of manufacturing methamphetamine on federally-assisted housing property (24 C.F.R. Sec. 982.553)

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

1. Payment of rent and utility bills;
2. Caring for a unit and premises;
3. Respecting the rights of other residents to the peaceful enjoyment of their housing;
4. Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
5. Compliance with other essential conditions of tenancy.

PART VII: OCCUPANCY

17-VII.A. OVERVIEW

After an applicant has been selected from the site based waiting list, determined eligible by OHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

17-VII.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

Form of Lease [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

OHA Policy

OHA will not review the owner's lease for compliance with state or local law.

Lease Requirements [24 CFR 983.256(c)]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

OHA Policy

If a lease is executed for a unit with accessibility features that the family does not require, the lease agreement must contain language or a lease addendum notifying the family that they may be required to move to another unit (with continues assistance) if the unit is needed by a family that does require the features (Section 17-VIII.C.).

Tenancy Addendum [24 CFR 983.256(d)]
The tenancy addendum in the lease must state:

1. The program tenancy requirements;
2. The composition of the household as approved by OHA (the names of family members and any OHA-approved live-in aide);
3. All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f)]
The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

1. The owner terminates the lease for good cause
2. The tenant terminates the lease
3. The owner and tenant agree to terminate the lease
4. OHA terminates the HAP contract
5. OHA terminates assistance for the family

Changes in the Lease [24 CFR 983.256(e)]
If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify OHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by OHA and in accordance with the terms of the lease relating to its amendment. OHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257]
The owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for "good cause" does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Tenant Absence from Unit [24 CFR 983.256(g) and 982.312(a)]

The lease may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by OHA policy. According to program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days. OHA termination of assistance actions due to family absence from the unit are

subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

OHA Policy

Absent family members in PBV assisted units are subject to the same standards applicable to tenant-based voucher program participants as define in Section 3-I.L. - ABSENT FAMILY MEMBERS.

Continuation of Housing Assistance Payments [24 CFR 982.258]

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by OHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

OHA Policy

Under MTW Activity #10-02, OHA extends the period before HAP contract termination and notification of family termination from the program from 6 to 24 months for family's where tenant rent equals the rent to owner. If a participating family receiving zero assistance experiences a change in circumstances after the initial 6 months and before the expiration of the 24 month period that would result in a HAP payment to the owner, the family must notify OHA of the change and request an interim reexamination before the expiration of the 24 month period. This change cannot be due to a Prohibited Actions as detailed in Chapter 14, whereby family members voluntarily terminate employment for less than a 30 day period, establishing a pattern of reduced employment at the time of program termination.

Security Deposits [24 CFR 983.258]

The owner may collect a security deposit from the tenant. OHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

OHA Policy

OHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner is subject to state and local law, regarding disposition of the security deposit. OHA has no liability or responsibility for payment of any amount owed by the family to the owner.

17-VII.C. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]

If OHA determines that a family is occupying a wrong size unit, based on the PHA's subsidy standards for PBV program units, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

OHA Policy

OHA will notify the family and the owner of the family's need to move based on the occupancy in a wrong-size or accessible unit. OHA will offer the family the following types of continued assistance, in the following order, based on the availability of assistance:

1. A PBV assisted unit in the same building or project;
2. A PBV assisted unit at another PBV development administered by OHA where the owner has been authorized to administer a site-based waiting list for PBV assisted units. The family may be referred to an owner administered sited-based waiting list with absolute preference for the next available appropriately sized PBV assisted unit;
3. A Public Housing unit;
4. MTW Housing Choice Voucher tenant-based assistance.

If OHA offers the family another form of continued housing assistance that is not a tenant-based voucher, the family will be given 60 calendar days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not accept the offer, does not move out of the PBV unit within the 60-day time frame, or both, OHA will terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of the 60 day period and remove the unit from the HAP contract.

OHA will make any exceptions necessary to the 60-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency.

If OHA offers the family a MTW Housing Choice Voucher, OHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by OHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, OHA must remove the unit from the HAP contract.

OHA Policy

Under MTW authority, the owner and OHA may waive this requirement by including a provision in the PBV HAP contract whereby the owner and OHA, agree to allow families to continue a tenancy in a PBV assisted, under-occupied (wrong sized) unit subject to the owner accepting a lower contract rent for an extension term of not less than one year. The extension term is renewable and will be reviewed annually at the family's anniversary

date thereafter. The lower rent will be based on the actual OHA subsidy standard determined for the family when the family's subsidy standard is lower than the actual PBV unit size. The lower rent for the unit will be determined by the approved PBV rent schedule for smaller sized unit in the development. If there is no PBV rent schedule for the unit size at the development, then rent will be established based on the lower of:

- The appropriate tenant-based (HCV) payment standard for the family size,
- The reasonable rent for the unit.

Family Right to Move

The family may terminate the tenancy in a project-based unit at any time after the first 24 months of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to OHA. If the family wishes to move with continued tenant-based assistance, the family must contact OHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance in accordance with PHA policy.

If the family terminates the assisted tenancy before the end of the 24 months of occupancy, the family relinquishes the opportunity for continued tenant-based assistance.

OHA Policy

In accordance with MTW Activity #11-02 and Activity #10-09, a family residing in a PBV unit may request a tenant-based voucher after occupying the PBV unit for at least two years (24 months). A household must complete the first 24 months of occupancy in the assisted PBV unit before it is eligible to request to move with a tenant-based voucher. If the family moves or terminated the PBV assisted tenancy before the end of the 24 months of occupancy, the family relinquishes the opportunity to request any tenant-based assistance. If no tenant-based Housing Choice Voucher is immediately available, the eligible PBV household may be added to the transfer waitlist.

To limit the impact on the HCV waitlist, the issuance of vouchers to PBV households on the transfer waitlist is subject to a ratio policy whereby one or more new vouchers are issued to families selected from the HCV tenant-based waiting list for every public housing or PBV transfer voucher issued. Typically, the ratio is approved annually in the MTW Annual Plan. To control demand, the annual maximum number of PBV and Public Housing transfers is subject to the Executive Director's discretion and stated in the MTW Annual Plan, and will not exceed more than 10 percent (10%) of the total units in the Public Housing and PBV programs combined per year.

Emergency Transfers under VAWA [Notice PIH 2017-08]
Except where special consideration is needed for the project-based voucher program,

OHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4). HUD requires that OHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

OHA Policy

When the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, has lived in the unit for less than one year, OHA will provide several options for continued assistance.

OHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where OHA has PBV units.

OHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for a transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in OHA's public housing program. Such a decision will be made by OHA based on the availability of tenant-based vouchers and/or vacancies in other units. Such families must be selected from the waiting list for the applicable program. OHA has adopted a confidential transfer list for certain circumstances that require immediate attention in both its HCV and public housing programs in order to expedite this process.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, OHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where OHA has PBV units. OHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to OHA's public housing program. OHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking as part of the public housing ACOP in order to expedite this process. OHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking, and human trafficking as part of the public housing ACOP in order to expedite this process.

17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP

OHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families
- Authorized by an MTW Activity

- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates
    - For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

OHA Policy

Under MTW Activity #12-01, OHA will not limit the number of total number of dwelling units (PBV Occupancy Cap) in a project that will receive PBV assistance during the term of the PBV HAP contract and may provide PBV assistance for up to 100% of units within a project.

PART VIII: DETERMINING RENT TO OWNER

17-VIII.A. OVERVIEW

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the tem of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

17-VIII.B. RENT LIMITS [24 CFR 983.301]

Except for certain tax credit units, the rent to owner must not exceed the lowest of the following amounts:

- The reasonable rent;
- The rent requested by the owner.
- The applicable Voucher Payment Standard for the unit based on the family's Subsidy Standard size minus any utility allowance.

Certain Tax Credit Units [24 CFR 983.301(c)]
For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;

1. The contract unit is not located in a qualified census tract;
2. There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
3. The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard;
4. For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:
    a. The tax credit rent minus any utility allowance;
    b. The reasonable rent; or
    c. The rent requested by the owner.

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Tax credit rent is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]
OHA must determine reasonable rent in accordable with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordable with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If OHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

> **OHA Policy**
> OHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, OHA will use the higher initial rent to owner amount.

Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]
When determining the initial rent to owner, the PHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the PHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment stand amount for use in the PBV program.

Likewise, the PHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

> **OHA Policy**
> The same utility allowance schedule and any utility allowance policies developed for the MTW tenant-based program, also apply to the project-based voucher program. Any alternate payment standards or exception payment standard hubs as authorized in the MTW Plan for the MTW tenant-based program may also apply to the project-based voucher program.

Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]
While small area FMRs (SAFMRs) do not apply to PBV projects, if OHA operates a tenant-based program under SAFMRs (either by HUD-designation or because OHA requested HUD approval to use SAFMRs) it may apply SAFMRs to all future PBV HAP contracts. If OHA adopts this policy, it must apply to all future PBV projects and OHA's entire jurisdiction. OHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if OHA subsequently changes its policy.

Further, OHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective dates of both the SAFMR designation and OHA administrative plan policy, provided the owner is willing to mutually agree to doing so and the application is prospective. OHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if OHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

OHA Policy
OHA will not apply SAFMRs to the PBV program.

Redetermination of Rent [24 CFR 983.302]
OHA must redetermine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

Rent Increase
If an owner wishes to request an increase in the rent to owner from the PHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the PHA. The PHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

OHA Policy
An owner's request for a rent increase must be submitted to OHA 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing. If a rent increase is approved, the adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

OHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS/NSPIRE standards. The owner may not receive any retroactive increase of rent for any period of noncompliance.

Rent Decrease
If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent

amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where OHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

Notice of Rent Change

The rent to owner is redetermined by written notice by OHA to the owner specifying the amount of the redetermined rent. OHA's notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

OHA Policy

OHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

OHA-owned Units [24 CFR 983.301(g)]

For OHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA must use the rent to owner established by the independent entity.

17-VIII.C. REASONABLE RENT

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by OHA, except where OHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Initial Contract Rents

OHA Policy

The initial contract rents for all PBV HAP contracts will be based on a market rent study performed by an appraiser.

The appraiser's market rent study used to determine initial contract rents for PBV program units may be based on a geographical area covering multiple sites or specific unit types located within that geographical area.

Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-

based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

OHA-owned Units
For OHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements.

Owner Certification of Reasonable Rent
By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the PHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

Other Subsidy [24 CFR 983.304]
To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, OHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding. For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.
For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program:

1. An insured or non-insured Section 236 project;
2. A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
3. A Section 221(d)(3) below market interest rate (BMIR) project;
4. A Section 515 project of the Rural Housing Service;
5. Any other type of federally subsidized project specified by HUD.

Combining Subsidy
Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

Rent Control [24 CFR 983.305]

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

PART IX: PAYMENTS TO OWNER

17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, OHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS/NSPIRE standards and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and OHA agree on a later date.

Except for discretionary vacancy payments, OHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by OHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if OHA determines that the vacancy is the owner's fault.

OHA Policy

If OHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, OHA will notify the landlord of the amount of housing assistance payment that the owner must repay.

At the discretion of OHA, the HAP contract may provide for vacancy payments to the owner. OHA may only make vacancy payments if:

1. The owner gives OHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
2. The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
3. The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
4. The owner provides any additional information required and requested by OHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by OHA and must provide any information or substantiation required by OHA to determine the amount of any vacancy payment.

OHA Policy

The owner may retain the HAP payment for the month in which the tenant moved out and OHA may make vacancy loss payments to the owner for up to two (2) full calendar months after the month in which the unit becomes vacant. Vacancy loss payments will be made in an amount equal to OHA's HAP for the family that last occupied that unit. The owner is not eligible to receive any vacancy loss payments beyond the second calendar month after the unit becomes vacant.

The owner will only receive the vacancy loss payment if the vacancy is not the owner's fault (e.g., tenant caused HQS/NSPIRE violations) and the owner has taken every action to minimize the likelihood and length of any vacancy.

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified OHA of the vacancy.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and OHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by OHA within 10 business days of OHA's request, no vacancy payments will be made.

17-IX.C. TENANT RENT TO OWNER

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by OHA. Any changes in the amount of tenant rent will be effective on the date stated in OHA's notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by OHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by OHA. The owner must immediately return any excess payment to the tenant.

OHA Policy

OHA may elect to utilize rent determination protocols developed under MTW authority for tenant-based voucher assistance for the determination of tenant rent to owner in project-based voucher program assisted units.

Tenant and OHA Responsibilities
The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by OHA.

Likewise, OHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. OHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit.

Utility Reimbursements
If the amount of the utility allowance exceeds the total tenant payment, OHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

OHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If OHA chooses to pay the utility supplier directly, OHA must notify the family of the amount paid to the utility supplier.

> **OHA Policy**
> In accordance with MTW Activity #15-02, OHA will not make utility reimbursements to or on behalf of the family.

17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]

Meals and Supportive Services
With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner
The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

Chapter 18

EMERGENCY HOUSING AND STABILITY VOUCHERS

INTRODUCTION

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARP) (P.L. 117-2). Section 3202 of the ARP appropriated $5 billion for the creation, administration, and renewal of new incremental emergency housing vouchers (EHVs) and other eligible expenses related to COVID-19.

On May 5, 2021, HUD issued Notice PIH 2021-15, which described HUD's process for allocating approximately 70,000 EHVs to eligible PHAs and set forth the operating requirements for PHAs who administer them. Based on criteria outlined in the notice, HUD notified eligible PHAs of the number of EHVs allocated to their agency, and PHAs were able to accept or decline the invitation to participate in the program.

The Consolidated Appropriations Act, 2021 (Public Law 116-260) (2021 Act), made $43,439,000 available for new incremental voucher assistance under Section 8(o) of the United States Housing Act of 1937 for use by individuals and families with the same risk factors prioritized under the EHV program. The Consolidated Appropriations Act, 2022 (Public Law 117-103 (2022 Act) further provides that HUD may waive certain statutory and regulatory provisions to administer the SVs, allowing PHAs to administer the SV program in broadly the same manner as EHV program.

The fundamental differences between these voucher programs include:

1. EHVs sunset after September 30, 2023. After this date, no new EHVs may be issues and PHAs cannot reissues EHVs that have turned over. SVs do not have a sunset date.
2. PHAs may not project-base EHVs; EHVs are exclusively tenant-based assistance. However, all tenant-based SV awards can be converted to Project-Based Vouchers (PBV) at any time after award without HUD approval provided all the established PBV regulations and requirements are followed.
3. Funding for service fees for SVs is significantly lower than the amount allocated for EHVs.

All applicable nondiscrimination and equal opportunity requirements apply to the EHV and SV programs, including requirements that the PHA grant reasonable accommodations to persons with disabilities, effectively communicate with persons with disabilities, and ensure meaningful access for persons with limited English proficiency (LEP).

This chapter describes HUD regulations and PHA policies for administering EHVs and SVs. The policies outlined in this chapter are organized into seven sections, as follows:

Part I: Funding
Part II: Partnering Agencies
Part III: Waiting List Management
Part IV: Family Eligibility
Part V: Housing Search and Leasing
Part VI: Use of Funds, Reporting, and Financial Records

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to EHVs and SVs.

PART I. FUNDING

18–I.A. FUNDING OVERVIEW

The American Rescue Plan Act of 2021 (ARP) provides administrative fees and funding for the costs of administering emergency housing vouchers (EHVs) and other eligible expenses defined in Notice PIH 2021-15. These fees may only be used for EHV administration and other eligible expenses and must not be used for or applied to other PHA programs or vouchers. The PHA must maintain separate financial records from its regular HCV funding for all EHV funding.

Housing Assistance Payments (HAP) Funding

ARP funding obligated to the PHA as housing assistance payments (HAP) funding may only be used for eligible EHV HAP expenses (i.e., rental assistance payments). EHV HAP funding may not be used for EHV administrative expenses or for the eligible uses under the EHV services fee. The initial funding term will expire December 31, 2022. HUD will provide renewal funding to OHA for the EHVs on a calendar year (CY) basis commencing with CY 2023. The renewal funding allocation will be based on OHA's actual EHV HAP costs in leasing, similar to the renewal process for the regular HCV program. EHV renewal funding is not part of the annual HCV renewal funding formula; EHVs are renewed separately from the regular HCV program. All renewal funding for the duration of the EHV program has been appropriated as part of the ARP funding.

Administrative Fee and Funding

The following four types of fees and funding are allocated as part of the EHV program:

- **Preliminary fees** support immediate start-up costs that the PHA will incur in implementing alternative requirements under EHV, such as outreach and coordination with partnering agencies:
  - $400 per EHV allocated to the PHA, once the consolidated annual contributions contract (CACC) is amended.
  - This fee may be used for any eligible administrative expenses related to EHVs.
  - The fee may also be used to pay for any eligible activities under EHV service fees (TPS-I.B).

- **Placement fees/expedited issuance reporting fees** will support initial lease-up costs and the added cost and effort required to expedite leasing of EHVs:
  - $100 for each EHV initially leased, if the PHA reports the voucher issuance date in Public Housing Information Center–Next Generation (PIC–NG) system within 14 days of voucher issuance or the date the system becomes available for reporting.
  - Placement fees:
    - $500 for each EHV family placed under a HAP contract effective within four months of the effective date of the ACC funding increment; or
    - $250 for each EHV family placed under a HAP contract effective after four months but less than six months after the effective date of the ACC funding increment.
    - HUD will determine placement fees in the event of multiple EHV allocations and funding increment effective dates.
  - Placement/expedited issuance fees only apply to the initial leasing of the voucher; they are not paid for family moves or to turnover vouchers.

- **Ongoing administrative fees**, which are calculated in the same way as the standard HCV program:
  - PHAs are allocated administrative fees using the full column A administrative fee amount for each EHV under contract as of the first day of each month.
  - Ongoing EHV administrative fees may be subject to proration in future years, based on available EHV funding.
- **Services fees**, which are a one-time fee to support PHAs' efforts to implement and operate an effective EHV services program in its jurisdiction (TPS-I.B):
  - The fee is allocated once the PHA's CACC is amended to reflect EHV funding.
  - The amount allocated is $3,500 for each EHV allocated.

18–I.B. SERVICE FEES

Services fee funding must be initially used for defined eligible uses and not for other administrative expenses of operating the EHV program. Service fees fall into four categories:

- Housing search assistance
- Security deposit/utility deposit/rental application/holding fee uses
- Owner-related uses
- Other eligible uses such as moving expenses or tenant-readiness services

The PHA must establish the eligible uses and the parameters and requirements for service fees in the PHA's administrative plan.

OHA Policy

Eligible uses of services fees include the following:

Holding fees are fees an owner requests that are rolled into the security deposit after an application is accepted but before a lease is signed. OHA may cover part or all of the holding fee for units where the fee is required by the owner after a tenant's application has been accepted but before the lease signing. OHA and owner must agree how the holding fee gets rolled into the deposit, and under what conditions the fee will be returned. In general, owners need to accept responsibility for making needed repairs to a unit required by the initial housing quality standards (HQS) inspections and can only keep the holding fee if the client is at fault for not entering into a lease.

Security deposit assistance. The amount of the security deposit assistance may not exceed the lesser of two months' rent to owner, the maximum security deposit allowed under applicable state and/or local law, or the actual security deposit required by the owner. OHA may pay the security deposit assistance directly to the owner or may pay the assistance to the family. If paid to the family, OHA will require documentation that the family paid the security deposit. This assistance may be offered to direct referrals from the CoC as needed.

Utility deposit assistance/utility arrears. OHA may provide utility deposit assistance for some or all of the family's utility deposit expenses. Assistance can be provided for deposits (including connection fees) required for the utilities to be supplied by the tenant under the lease. OHA may pay the utility deposit assistance directly to the utility company or may pay the assistance to the family. If paid to the family, OHA will require

documentation the family paid the utility deposit. OHA will require the utility supplier or family to return the utility deposit assistance to OHA at such time the deposit is returned by the utility supplier (less any amounts retained by the utility supplier). In addition, some families may have large balances with gas, electric, water, sewer, or trash companies that will make it difficult if not impossible to establish services for tenant-supplied utilities. OHA may also provide the family with assistance to help address these utility arrears to facilitate leasing. Utility deposit assistance returned to OHA will be used for either services fee eligible uses or other EHV administrative costs, as required by HUD.

Moving expenses (including move-in fees and deposits). OPHA may provide assistance for some or all of the family's reasonable moving expenses when they initially lease a unit with the EHV. OHA will not provide moving expenses assistance for subsequent moves unless the family is required to move for reasons other than something the family did or failed to do (e.g., OHA is terminating the HAP contract because the owner did not fulfill the owner responsibilities under the HAP contract or the owner is refusing to offer the family the opportunity to enter a new lease after the initial lease term, as opposed to the family choosing to terminate the tenancy in order to move to another unit), or a family has to move due to domestic violence, dating violence, sexual assault, or stalking.

Tenant-readiness services. OHA may use fees to help create a customized plan to address or mitigate barriers that individual families may face in renting a unit with an EHV, such as negative credit, lack of credit, negative rental or utility history, or to connect the family to other community resources (including COVID-related resources) that can assist with rental arrears.

Application fees/non-refundable administrative or processing fees/refundable application deposit assistance. OHA may choose to assist the family with some or all these expenses.

Essential household items. OHA may use services fee funding to assist the family with some or all of the costs of acquiring essential household items such as tableware, cooking equipment, beds or bedding, and essential sanitary products such as soap and toiletries. OHA intends to provide each EHV family with a "Welcome Kit" that contains various essential household items.

Renter's insurance if required by the lease. OHA may choose to assist the family with some or all this cost.

Owner recruitment and incentives. OHA may use the service fee funding to conduct owner recruitment and outreach specifically for EHVs. In addition to traditional owner recruitment and outreach, activities may include conducting pre-inspections or otherwise expediting the inspection process, providing enhanced customer service, and offering owner incentive and/or retention payments. Other activities may include but not limited to:

- New unit incentive payments
- Payments to fix HQS fail items

- Speed leasing bonus payments

Owner incentive and/or retention payments. OHA may make incentive or retention payments to owners that agree to initially lease their unit to an EHV family and/or renew the lease of an EHV family. Payments will be made as a single payment at the beginning of the assisted lease term (or lease renewal if a retention payment). Owner incentive and

retentions payments are not housing assistance payments, are not part of the rent to owner, and are not taken into consideration when determining whether the rent for the unit is reasonable.

Any services fee assistance that is returned to OHA after its initial or subsequent use may only be applied to the eligible services fee uses defined in Notice PIH 2021-15 (or subsequent notice) or other EHV administrative costs. Any amounts not expended for these eligible uses when OHA's EHV program ends must be remitted to HUD.

PART II. PARTNERING AGENCIES

18–II.A. CONTINUUM OF CARE (CoC)

PHAs that accept an allocation of EHVs or SVs are required to enter into a Memorandum of Understanding (MOU) with the Continuum of Care (CoC) to establish a partnership for the administration of EHVs or SVs.

OHA Policy

OHA has entered into MOUs with the Alameda County Continuum of Care (CoC) and the County of Alameda on behalf of its Alameda County Health Care Services Agency (HCSA) See Exhibits 18-1 and 18-2 for a copy of the MOUs

18–II.B. OTHER PARTNERING ORGANIZATIONS

The PHA may, but is not required to, partner with other organizations trusted by persons experiencing homelessness, such as victim services providers (VSPs) and other community partners. If the PHA chooses to partner with such agencies, the PHA must either enter into an MOU with the partnering agency or the partnering agency may be added to the MOU between the PHA and CoC.

OHA Policy

The CoC will be responsible for administering relationships with other partnering organizations. See Exhibits 18-1 and 18-2 for a copy of the MOU.

18–II.C. REFERRALS

CoC and Partnering Agency Referrals

The primary responsibility of the CoC under the MOU with the PHA is to make direct referrals of qualifying individuals and families to the PHA. OHA must generally refer a family that is seeking EHV or SV assistance directly from OHA to the CoC or other referring agency for initial intake, assessment, and possible referral for EHV or SV assistance. Partner CoCs are responsible for determining whether the family qualifies under one of the four eligibility categories for EHVs. The CoC or other direct referral partner must provide supporting documentation to OHA of the referring agency's verification that the family meets one of the four eligible categories for EHV or SV assistance.

OHA Policy

1. The following populations shall be eligible for EHV or SV assistance and will be referred to Oakland Housing Authority by the County CoC [or other partnering agencies through specific Housing Authority MOUs referred to as "partnering agency"]:
   In order to be eligible for an EHV or SV, an individual or family must meet one of four eligibility categories, definitions of which are set forth in Exhibit A attached hereto and incorporated herein by this reference:
   - Homeless
   - At risk of homelessness
   - Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking
   - Recently homeless and for whom providing rental assistance will prevent the

family's homelessness or having high risk of housing instability.

In Alameda County, the following groups have been prioritized for EHV referral:

- Homeless (prioritized through coordinated entry, including a 9% set-aside for Transition-aged youth)
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking (prioritized through coordinated entry in collaboration with provider agencies, a 10% set-aside)
- Recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability (targeted to people who were at high risk for COVID-19 complications and exited Project Roomkey with temporary subsidies).

In general, the verification that the individual or family meets one of these four eligibility categories is conducted by the County CoC or another partnering agency that makes direct referrals to OHA. The County CoC or other partnering agency must provide supporting documentation at the time of referral to OHA of the referring agency's verification and certification that the family meets one of the four eligible categories for EHV assistance. OHA must retain this documentation as part of the family's file. Examples of HUD approved certifications that can be used to document the referring agency's verification are attached hereto as Exhibits B and C respectively and incorporated herein by this reference.

Individuals and families classified as recently homeless must be referred by the County CoC or its designee. Referrals to OHA will follow procedures outlined in the MOU and determined by OHA in collaboration with Coordinated Entry partners. OHA may elect to use EHVs for emergency VAWA transfers per OHA's Emergency Transfer Plan. If it is determined that the amount or timeliness of referrals from the CoC is not sufficient to meet leasing goals, OHA may pursue other referral options as outlined in PIH Notice 2021-15 and the MOU.

2. General Eligibility and Prioritization. Coordinated Entry prioritization and assessment factors are approved by the CoC and posted at https://everyonehome.org/.

3. HCSA, as the management entity of the County COC, shall generally submit eligible EHV tenant referrals to one of the four Housing Authorities pursuant to the following procedures: based on where tenants have been housed (if recently housed and homeless), "home city" as reported in the Homeless Management Information System, and where the referred person would like to live in as long as EHVs are available at that Housing Authority.

The Housing Authorities plan to work with the CoC referral partners to establish a detailed workflow for the referral process and will use these procedures once they have been established. The referral process may differ for each Housing Authority and be based on items such as but not limited to email, data sharing portals or business system transmittals.

Offers of Assistance with CoC Referral

The PHA may make an EHV available without a referral from the CoC or other partnering organization in order to facilitate an emergency transfer under VAWA in accordance with the

PHA's Emergency Transfer Plan (ETP) in Chapter 16.
The PHA must also take direct referrals from outside the CoC if:

- The CoC does not have a sufficient number of eligible families to refer to the PHA; or
- The CoC does not identify families that may be eligible for EHV assistance because they are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking.

If at any time the PHA is not receiving enough referrals or is not receiving referrals in a timely manner from the CoC or other partner referral agencies (or the PHA and CoC cannot identify any such alternative referral partner agencies), HUD may permit the PHA on a temporary or permanent basis to take EHV applications directly from applicants and admit eligible families to the EHV program in lieu of or in addition to direct referrals in those circumstances.

PART III. WAITING LIST MANAGEMENT

18-III.A. HCV WAITING LIST

The regulation that requires OHA to admit applicants as waiting list admissions or special admissions in accordance with admission policies in Chapter 4 does not apply to PHAs operating the EHV or SV programs. Direct referrals are not added to the PHA's HCV waiting list.
OHA must inform families on the HCV waiting list of the availability of EHVs and SVs by, at a minimum, either by posting the information to their website or providing public notice in their respective communities in accordance with the requirements listed in Notices PIH 2021-15 and 2022-24.

OHA Policy

OHA will post information about the EHV and SV programs for families on their website. The notice will:

- Describe the eligible populations to which EHVs and SVs are limited
- Clearly state that the availability of these vouchers is managed through a direct referral process
- Advise the family to contact the CoC (or any other referral partner designated by the CoC, if applicable) if the family believes they may be eligible for EHV or SV assistance

OHA will ensure effective communication with persons with disabilities, including those with vision, hearing, and other communication-related disabilities in accordance with Chapter 2. The PHA will also take reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP) in accordance with Chapter 2.

18–III.B. SEPARATE WAITING LISTS

The HCV regulations requiring OHA to operate a single waiting list for admission to the HCV program do not apply to PHAs operating the EHV or SV programs. Instead, when the number of applicants referred by the CoC or partnering agency exceeds the EHVs or SVs available, OHA must maintain separate waiting lists for EHV and SV referrals, both at initial leasing and for any EHV turnover vouchers that may be issued prior to September 30, 2023.
Further, the EHV and SV waiting lists are not subject to OHA policies in Chapter 4 regarding opening and closing the HCV waiting list. OHA will work directly with its CoC and other referral agency partners to manage the number of referrals and the size of the EHV and SV waiting lists.

18–III.C. PREFERENCES

HCV Waiting List Preferences

If local preferences are established by the PHA for HCV, they do not apply to EHVs or SVs. However, if the PHA has a homeless preference or a VAWA preference for the HCV waiting list, the PHA must adopt additional policies related to EHVs in accordance with Notice PIH 2021-15.

OHA Policy

OHA has a homeless preference for the HCV waiting list as outlined in Section 4-III.C. Local Preferences. OHA will refer any applicant on the waiting list that indicates they qualify for the homeless preference to the CoC. The CoC will determine whether the

family is eligible for an EHV (based on the qualifying definition for EHV assistance for homelessness or another eligible category as applicable). The CoC will also determine if the family is eligible for other homeless assistance.

EHV and SV Waiting List Preferences

With the exception of a residency preference, OHA may choose, in coordination with the CoC and other referral partners, to establish separate local preferences for EHVs. OHA may, however, choose to not establish any local preferences for the EHV waiting list.

OHA Policy

No local preferences have been established for the EHV or SV waiting lists.

PART IV: FAMILY ELIGIBILITY

18–IV.A. OVERVIEW

The CoC or referring agency determines whether the individual or family meets any one of the four eligibility criteria described in Notice PIH 2021-15 and then refers the family to the PHA. The PHA determines that the family meets other eligibility criteria for the HCV program, as modified for the EHV and SV programs and outlined below.

18–IV.B. REFERRING AGENCY DETERMINATION OF ELIGIBLITY

In order to be eligible for an EHV, an individual or family must meet one of four eligibility criteria:

- Homeless as defined in 24 CFR 578.3;
- At risk of homelessness as defined in 24 CFR 578.3;
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking (as defined in Notice PIH 2021-15), or human trafficking (as defined in the 22 U.S.C. Section 7102); or
- Recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability as determined by the CoC or its designee in accordance with the definition in Notice PIH 2021-15.

As applicable, the CoC or referring agency must provide documentation to OHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance. OHA must retain this documentation as part of the family's file.

18–IV.C. PHA SCREENING

Overview

HUD waived 24 CFR 982.552 and 982.553 in part for the EHV and SV applicants and established an alternative requirement for mandatory and permissive prohibitions of admissions. Except where applicable, OHA policies regarding denials in Chapter 3 of this policy do not apply to screening individuals and families for eligibility for an EHV or SV. Instead, the alternative requirement listed in this section will apply to all EHV and SV applicants.

The mandatory and permissive prohibitions listed in Notices PIH 2021-15 and PIH 2022-24 and in this chapter, however, apply only when screening the individual or family for eligibility for an EHV or SV. When adding a family member after the family has been placed under a HAP contract with EHV or SV assistance, the regulations at 24 CFR 982.551(h)(2) apply. Other than the birth, adoption, or court-awarded custody of a child, OHA must approve additional family members and may apply its regular HCV screening criteria in Chapter 3 in doing so.

Mandatory Denials

Under alternative requirements for the EHV program, mandatory denials for EHV applicants include:

- 24 CFR 982.553(a)(1)(ii)(C), which prohibits admission if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
- 24 CFR 982.553(a)(2)(i), which prohibits admission to the program if any member of the household is subject to a lifetime registration requirement under a state sex offender

registration program.

OHA must deny admission to the program if any member of the family fails to sign and submit consent forms for obtaining information as required by 24 CFR 982.552(b)(3) but should notify the family of the limited EHV grounds for denial of admission first.

OHA Policy
OHA will deny admission to the program if any adult member (or head of household or spouse, regardless of age) fails to sign and submit consent forms, OHA will first notify the family of the limited EHV grounds for denial of admission as part of the notice of denial that will be mailed to the family.

OHA will deny admission based on the mandatory conditions outlined in PIH Notice 2021-15 and listed above.

Permissive Denial

Notice PIH 2021-15 lists permissive prohibitions for which the PHA may, but is not required to, deny admission to EHV families. The notice also lists prohibitions that, while allowable under the HCV program, may not be used to deny assistance for EHV families.
If the PHA intends to establish permissive prohibition policies for EHV applicants, the PHA must first consult with its CoC partner to understand the impact that the proposed prohibitions may have on referrals and must take the CoC's recommendations into consideration.

OHA Policy
OHA will not use any of the permissive or optional reasons for denial of admission.

In compliance with PIH 2021-15, the PHA **will not** deny an EHV applicant admission regardless of whether:

- Any member of the family has been evicted from federally assisted housing in the last five years; A PHA has ever terminated assistance under the program for any member of the family;
- The family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act;
- The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease;
- The family breached an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA;
- The family would otherwise be prohibited admission under alcohol abuse standards established by the PHA in accordance with 24 CFR 982.553(a)(3);
- The PHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission, drug-related criminal activity.

18–IV.D. INCOME VERIFICATION AT ADMISSION

Self-Certification at Admission

The requirement to obtain third-party verification of income in accordance with Notice PIH 2018-18 does not apply to the EHV program applicants at admission, and alternatively, PHAs may consider self-certification the highest form of income verification at admission. As such,

PHA policies related to the verification of income in Section 7-I.B. do not apply to EHV families at admission. Instead, applicants must submit an affidavit attesting to their reported income, assets, expenses, and other factors that would affect an income eligibility determination. Additionally, applicants may provide third-party documentation that represents the applicant's income within the 60-day period prior to admission or voucher issuance but is not dated within 60 days of the PHA's request.

OHA Policy

Any documents used for verification must be the original (not photocopies) and dated within the 60-day period prior to admission. The documents must not be damaged, altered, or in any way illegible.

Printouts from webpages are considered original documents.

Any family self-certifications must be made in a format acceptable to OHA and must be signed by the family member whose information or status is being verified.
OHA will address any material discrepancies (i.e., unreported income or a substantial difference in reported income) that may arise later. 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 excess subsidy, OHA will terminate the family's assistance in accordance with the policies in Chapter 12.

Recently Conducted Income Determinations

PHAs may accept income calculations and verifications from third-party providers or from an examination that the PHA conducted on behalf of the family for another subsidized housing program in lieu of conducting an initial examination of income as long as:
The income was calculated in accordance with rules outlined at 24 CFR Part 5 and within the last six months; and
The family certifies there has been no change in income or family composition in the interim.

OHA Policy

OHA will not accept income calculations and verifications from third-party providers. The family certification must be made in a format acceptable to OHA and must be signed by all adult family members whose information or status is being verified.

At the time of the family's annual reexamination the PHA must conduct the annual reexamination of income as outlined at 24 CFR 982.516 and PHA policies in Chapter 11.

EIV Income Validation

Once HUD makes the EIV data available to PHAs under this waiver and alternative requirement, the PHA must:

- Review the EIV Income and Income Validation Tool (IVT) reports to confirm and validate family-reported income within 90 days of the PIC submission date;
- Print and maintain copies of the EIV Income and IVT Reports in the tenant file; and
- Resolve any income discrepancy with the family within 60 days of the EIV Income or IVT Report dates.

Prior to admission, PHAs must continue to use HUD's EIV system to search for all household members using the Existing Tenant Search in accordance with PHA policies in Chapter 3.

If a PHA later determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program in accordance with Chapter 12.

18–IV.E. SOCIAL SECURITY NUMBER AND CITIZENSHIP STATUS VERIFICATION

For the EHV program, the PHA is not required to obtain and verify SSN documentation and documentation evidencing eligible noncitizen status before admitting the family to the EHV program. Instead, PHAs may adopt policies to admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. As an alternative requirement, such individuals must provide the required documentation within 180 days of admission to be eligible for continued assistance, pending verification, unless the PHA provides an extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation.
If a PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

OHA Policy

OHA will admit EHV and SV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. These individuals must provide the required documentation in accordance with policies in Chapter 7 within 180 days of admission. OHA may provide an additional 60-day extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation.

If OHA determines that an ineligible family received assistance, OHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

18–IV.F. AGE AND DISABILITY VERIFICATION

PHAs may accept self-certification of date of birth and disability status if a higher level of verification is not immediately available. If self-certification is used, the PHA must obtain a higher level of verification within 90 days of admission or verify the information in EIV.
If a PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

OHA Policy

OHA will accept self-certification of date of birth and disability status if a higher form of verification is not immediately available. The 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. If self-certification is accepted, within 90 days of admission, OHA will verify the information in EIV or through other third-party verification if the information is not available in EIV. OHA will note the family's file that self-certification was used as initial verification and include an EIV printout or other third-party verification confirming the applicant's date of birth and/or disability status.

If OHA determines that an ineligible family received assistance, the PHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

18–IV.G. INCOME TARGETING

The PHA must determine income eligibility for EHV families in accordance with 24 CFR 982.201 and PHA policy in Chapter 3; however, income targeting requirements do not apply for EHV families. The PHA may still choose to include the admission of extremely low-income EHV families in its income targeting numbers for the fiscal year in which these families are admitted.

OHA Policy

OHA does not use income targeting.

PART V. HOUSING SEARCH AND LEASING

18–V.A. INITIAL VOUCHER TERM

Unlike the standard HCV program, which requires an initial voucher term of at least 60 days, EHVs and SVs must have an initial search term of at least 120 days. PHA policies on extensions as outlined in Section 5-II.E. will apply.

OHA Policy

All EHVs and SVs will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless OHA grants an extension.

18–V.B. HOUSING SEARCH ASSISTANCE

The PHA must ensure housing search assistance is made available to EHV families during their initial housing search. The housing search assistance may be provided directly by the PHA or through the CoC or another partnering agency or entity. ;

At a minimum, housing search assistance must:

- Help individual families identify potentially available units during their housing search, including physically accessible units with features for family members with disabilities, as well as units in low-poverty neighborhoods;
- Provide transportation assistance and directions to potential units;
- Conduct owner outreach;
- Assist with the completion of rental applications and PHA forms; and
- Help expedite the EHV leasing process for the family

OHA Policy

As identified in the MOU between OHA and the CoC, the following housing search assistance will be provided to each EHV family:

OHA will:

1. Coordinate and consult with the HCSA and CoC in developing the services and assistance to be offered to the EHV referrals;

2. The Housing Authority will establish windows of time for EHV applicants to complete intake interviews or review the intake packets for completeness and work directly with assigned staff to resolve missing or incomplete items and notify the applicant and any designated assistance staff such as Housing Navigators of appointment information as specified in process workflows;

3. Accept direct referrals for eligible individuals and families from HCSA through the Coordinated Entry System, and where applicable other referring agencies if the PHA has a separate MOU with those agencies;

4. Commit a sufficient number of staff and necessary resources to ensure that the application, certification, and voucher issuance processes are completed in a timely manner;

5. Commit a sufficient number of staff and resources to ensure that inspections of units are completed in a timely manner;

6. Designate a staff to serve as the lead EHV liaison;

7. Offer landlord and resident incentives consisting of but not limited to:
   - a new unit incentive payment for owners;
   - a renewal incentive for families that successfully complete the first lease term;
   - a leasing incentive to lease by designated dates to an owner and to an applicant
   - an incentive to residents for on time rental payments;

8. Inform HCSA once a month about the status of each referral including: denials, issue and expiration date of each voucher issued, and move-in date;

9. Start lease dates the first day of the month after inspection for clients who are transitioning from another rental assistance program;

10. Comply with the provisions of the MOU;

11. Provide one-time security deposits assistance for referrals if not provided by CoC services.

The CoC will:

1. HCSA Coordinated Entry staff and providers will support individuals and families in completing applications and obtaining necessary supporting documentation to support referrals and applications for assistance; while aiding households in addressing barriers;

2. HCSA Coordinated Entry staff and providers will support the Housing Authority in ensuring appointment notifications to eligible individuals and families and will assist eligible households in getting to meetings with the Housing Authority;

3. HCSA Coordinated Entry staff and providers will provide housing search assistance called Housing Navigation for eligible individuals and families. This assistance may consist of identifying and visiting possible units, transportation and direction assistance, documentation preparation, counseling on lease requirements, housing application assistance, advocacy for benefits and move-in assistance;

4. HCSA Coordinated Entry staff and providers will provide Housing Deposit assistance, which includes as deemed necessary security deposits, utility establishment fees which may include paying for any arrears, flexible funding for unit holds or incentives, utility deposits and optional essential household items and renters insurance as deemed necessary, to the extent that such funding is available and allocated in ESG-CV;

5. HCSA Coordinated Entry staff and HCSA-contracted providers will assess and refer individuals and families to additional benefits and supportive services including post move-in services, where applicable;

6. Coordinated Entry staff and HCSA-contracted providers will provide to voucher participants Tenancy Support services, which consist of support services throughout the duration of the tenancy such as education and training, linkage to community resources, and assistance with regularly scheduled housing recertifications;

7. HCSA Coordinated Entry staff and HCSA-contracted providers will provide Landlord Liaison assistance, by working with property owners to secure units and 24 hotline assistance per funding availability;

8. Coordinated Entry staff and HCSA-contracted providers will be responsible for all entry in HMIS.

18–V.C. HQS PRE-INSPECTIONS

To expedite the leasing process, PHAs may pre-inspect available units that EHV or SV families may be interested in leasing in order to maintain a pool of eligible units.

OHA Policy

To expedite the leasing process, OHA may pre-inspect available units that EHV or SV families may be interested in leasing to maintain a pool of eligible units. If an EHV family selects a unit that passed a HQS pre-inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval, the unit may be approved provided that it meets all other conditions under 24 CFR 982.305.

The family will be free to select their unit.
When a pre-inspected unit is not selected, OHA will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for any required re-inspections.

18–V.D. INITIAL LEASE TERM

Unlike in the standard the HCV program, EHV and SV voucher holders may enter into an initial lease that is for less than 12 months, regardless of the PHA policy in Section 9-I.E., Term of Assisted Tenancy.

18–V.E. PORTABILITY

The normal HCV portability procedures and requirements outlined in Chapter 10 generally apply to EHVs a**nd SVs**. Exceptions are addressed below.

Nonresident Applicants

Under EHV and SV, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied, regardless of PHA policy in Section 10-II.B.

Billing and Absorption

A receiving PHA cannot refuse to assist an incoming EHV or SV family, regardless of whether the PHA administers EHVs or SVs under its own ACC.

- If the EHV family moves under portability to another PHA that administers EHVs or SVs under its own ACC:
  - The receiving PHA may only absorb the incoming EHV or SV family with an EHV or SV (assuming it has vouchers available to do so).
  - If the PHA does not have an EHV or SV available to absorb the family, it must bill the initial PHA. The receiving PHA must allow the family to lease the unit with EHV or SV assistance and may not absorb the family with a regular HCV when the family leases the unit.
  - Regardless of whether the receiving PHA absorbs or bills the initial PHA for the family's EHV or SV assistance, the EHV or SV administration of the voucher is in accordance with the receiving PHA's EHV or SV policies.
- If the EHV or SV family moves under portability to another PHA that does not administer EHV or SV under its own ACC, the receiving PHA may absorb the family into its regular HCV program or may bill the initial PHA.

Family Briefing

In addition to the applicable family briefing requirements at 24 CFR 982.301(a)(2) as to how portability works and how portability may affect the family's assistance, the initial PHA must inform the family how portability may impact the special EHV or SV services and assistance that may be available to the family.

The initial PHA is required to help facilitate the family's portability move to the receiving PHA and inform the family of this requirement in writing, taking reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP).

OHA Policy

In addition to following OHA's policy on briefings in Chapter 5, as part of the briefing packet for EHV and SV families, OHA will include a written notice that OHA will assist the family with moves under portability.

For limited English proficient (LEP) applicants, OHA will provide interpretation services in accordance with OHA's LEP plan (See Chapter 2).

Coordination of Services

If the portability move is in connection with the EHV or SV family's initial lease-up, the receiving PHA and the initial PHA must consult and coordinate on the EHV or SV services and assistance that will be made available to the family.

OHA Policy

For EHV and SV families who are exercising portability, when OHA contacts the receiving PHA in accordance with Section 10-II.B. Preapproval Contact with Receiving PHA, OHA will consult and coordinate with the receiving PHA to ensure there is no duplication of EHV or SV services and assistance, and ensure the receiving PHA is aware of the maximum amount of services fee funding that the initial PHA may provide to the receiving PHA on behalf of the family.

Services Fee

Standard portability billing arrangements apply for HAP and ongoing administrative fees for EHV families.

For service fees funding, the amount of the service fee provided by the initial PHA may not exceed the lesser of the actual cost of the services and assistance provided to the family by the receiving PHA or $1,750, unless the initial PHA and receiving PHA mutually agree to change the $1,750 cap. Service fees are paid as follows:

- If the receiving PHA, in consultation and coordination with the initial PHA, will provide eligible services or assistance to the incoming EHV family, the receiving PHA may be compensated for those costs by the initial PHA, regardless of whether the receiving PHA bills or absorbs.
- If the receiving PHA administers EHVs, the receiving PHA may use its own services fee and may be reimbursed by the initial PHA, or the initial PHA may provide the services funding upfront to the receiving PHA for those fees and assistance.
- If the receiving PHA does not administer EHVs, the initial PHA must provide the services funding upfront to the receiving PHA. Any amounts provided to the receiving PHA that are not used for services or assistance on behalf of the EHV family must promptly be returned by the receiving PHA to the initial PHA.

Placement Fee/Issuance Reporting Fee

If the portability lease-up qualifies for the placement fee/issuance reporting fee, the receiving PHA receives the full amount of the placement component of the placement fee/issuing reporting fee. The receiving PHA is eligible for the placement fee regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program at initial lease-up. The initial PHA qualifies for the issuance reporting component of the placement fee/issuance reporting fee, as applicable.

18–V.F. PAYMENT STANDARDS

Payment Standard Schedule

For the EHV and SV programs, HUD has waived the regulation requiring a single payment standard for each unit size. Instead, the PHA may, but is not required to, establish separate higher payment standards for EHVs or SVs. Lower EHV or SV payment standards are not permitted. If the PHA is increasing the regular HCV payment standard, the PHA must also increase the EHV and SV payment standards if it would be otherwise lower than the new regular HCV payment standard. The separate EHV or SV payment standards must comply with all other HCV requirements with the exception of the alternative requirements discussed below.

Further, if the PHA chooses to establish higher payments standards for EHVs, HUD has provided other regulatory waivers:

- Defining the "basic range" for payment standards as between 90 and 120 percent of the published Fair Market Rent (FMR) for the unit size (rather than 90 to 110 percent).

  OHA Policy

  OHA will establish an exception payment standard up to 120 percent and if OHA establishes higher payment standards under MTW authority for the tenant-based voucher program, these higher payment standards will apply to EHVs and SVs.

Rent Reasonableness
All rent reasonableness requirements apply to EHV and SV units, regardless of whether the PHA has established an alternative or exception EHV or SV payment standard.

Increases in Payment Standards
The requirement that the PHA apply increased payment standards at the family's first regular recertification on or after the effective date of the increase does not apply to EHV or SV. The PHA may, but is not required to, establish an alternative policy on when to apply the increased payment standard, provided the increased payment standard is used to calculate the HAP no later than the effective date of the family's first regular reexamination following the change.

OHA Policy
OHA will not establish an alternative policy for increases in the payment standard. OHA policy in Section 11-III.B. governing increases in payment standards will apply to EHVs and SVs.

18–V.G. TERMINATION OF EHV VOUCHERS

After September 30, 2023, a PHA may not reissue EHVs when assistance for an EHV-assisted family ends. This means that when an EHV participant (a family that is receiving rental assistance under a HAP contract) leaves the program for any reason, the PHA may not reissue that EHV to another family unless it does so no later than September 30, 2023.

If an applicant family that was issued the EHV is unsuccessful in finding a unit and the EHV expires after September 30, 2023, the EHV may not be reissued to another family.
All EHVs under lease on or after October 1, 2023, may not under any circumstances be reissued to another family when the participant leaves the program for any reason.

An EHV that has never been issued to a family may be initially issued and leased after September 30, 2023, since this prohibition only applies to EHVs that are being reissued upon turnover after assistance to a family has ended. However, HUD may direct PHAs administering EHVs to cease leasing any unleased EHVs if such action is determined necessary by HUD to ensure there will be sufficient funding available to continue to cover the HAP needs of currently assisted EHV families.

OHA Policy
The EHV program has been allocated full funding through the American Rescue Plan (ARP). When the remaining EHV HAP renewal funding is no longer sufficient to fully fund all PHAs' EHV renewal funding eligibility, HUD will prorate EHV renewal funding allocations. If EHV funding received from HUD is not sufficient to cover the HAP of the remaining families, OHA will follow all available options to secure more EHV funding. If after all procedures are followed to obtain more funding, the funding is still insufficient to cover EHV HAP expenses, OHA will terminate assistance in the following order:

- In consultation with any agencies providing supportive services, those families deemed the most self-sufficient with the resources to maintain housing
- Families with the smallest EHV HAP payment
- Families with the longest tenure in the program. EHV families are not eligible for conversion to a Housing Choice Voucher while residing in OHA's jurisdiction. EHV families are eligible to apply to any open wait lists OHA administers, but the EHV

does not guarantee the family a place on the wait list. The EHV family must apply and be processed in the same manner as all other applicants

PART VI. USE OF FUNDS, REPORTING, AND FINANCIAL RECORDS

EHV and SV funds allocated to OHA for HAP (both funding for the initial allocation and HAP renewal funding) may only be used for eligible EHV and SV HAP purposes. EHV HAP funding and SV HAP funding obligated to the PHA may not be used for administrative expenses or the other eligible expenses under this notice. Likewise, EHV or SV administrative fees and funding obligated to OHA are to be used for those purposes and must not be used for HAP.

The appropriated funds for EHVs and SVs are separate from the regular HCV program and may not be used for the regular HCV program but may only be expended for EHV or SV eligible purposes. EHV HAP funds and SV HAP funds may not roll into the regular HCV restricted net position (RNP) and must be tracked and accounted for separately as EHV RNP and SV RNP. EHV or SV administrative fees and funding for other eligible expenses permitted by Notices PIH 2021-15 and PIH 2022-24 may only be used in support of the EHVs or SVs and cannot be used for regular HCVs. EHV funding and SV funding may not be used for the repayment of debts or any amounts owed to HUD by HUD program participants including, but not limited to, those resulting from Office of Inspector General (OIG), Quality Assurance Division (QAD), or other monitoring review findings.

OHA must comply with EHV and SV reporting requirements in the Voucher Management System (VMS) and Financial Data Schedule (FDS) as outlined in Notices PIH 2021-15 and PIH 2022-24.

OHA must maintain complete and accurate accounts and other records for the program and provide HUD and the Comptroller General of the United States full and free access to all accounts and records that are pertinent the administration of the EHVs or SVs in accordance with the HCV program requirements at 24 CFR 982.158.

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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)
FUP	**Family Unification Program**
FY	Fiscal year
FYE	Fiscal year end
GAO	Government Accountability Office
GR	Gross rent
HAP	Housing assistance payment
HCV	Housing choice voucher (Section 8)
HOPWA	Housing Opportunities for Persons with AIDS
HQS	Housing quality standards.
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

LAP	Language Assistance Plan
LEP	Limited English Proficiency
MHSA	Mental Health Services Act
MSA	Metropolitan statistical area (established by the U.S. Census Bureau)
MTW	Moving To Work (HUD acronym) or Making Transitions Work (OHA acronym)
MTCS	Multi-family Tenant Characteristics System (now the Form HUD-50058 submodule of the PIC system)
NOFA	Notice of funding availability
OHA	Oakland Housing Authority
OMB	Office of Management and Budget
PASS	Plan for Achieving Self-Support
PHA	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
UPCS	Uniform Property Conditions Standards
VAWA	Violence Against Women Reauthorization Act of 2013

B. GLOSSARY OF TERMS IN SUBSIDIZED HOUSING

Absorption. In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

Accessible. The facility or portion of the facility can be approached, entered, and used by individuals with physical handicaps.

Adjusted Income. Annual income, less allowable HUD deductions.

Adjusted Annual Income. Same as Adjusted Income.

Administrative fee. Fee paid by HUD to the PHA for administration of the program. See §982.152.

Administrative fee reserve (formerly "operating reserve"). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See §982.155. Administrative fee reserves from FY 2004 and 2005 funding are further restricted to activities related to the provision of tenant-based rental assistance authorized under Section 8.

Administrative plan. The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA's board and included as a supporting document to the PHA Plan. See §982.54.

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

Affiliated individual. With respect to an individual, a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis (in the place of a parent), or any individual, tenant, or lawful occupant living in the household of that individual

Amortization payment. In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.

Annual contributions contract (ACC). *The* written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

Annual Income. The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

Applicant (applicant family). A family that has applied for admission to a program but is not yet a participant in the program.

Area Exception Rent. An amount that exceeds the published FMR. See §982.504(b).

"As-paid" States. States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

Assets. (See Net Family Assets.)

Auxiliary aids. Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance.

Budget authority. An amount authorized and appropriated by the Congress for payment to HAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

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

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

Citizen. *A* citizen or national of the United States.

Co-head. An individual in the household who is equally responsible for the lease with the head of household. A family may have a co-head or spouse but not both. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.

Common space. In shared housing: Space available for use by the assisted family and other occupants of the unit.

Computer match. The automated comparison of data bases containing records about individuals.

Confirmatory review. An on-site review performed by HUD to verify the management performance of a PHA.

Consent form. Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see §982.606 to §982.609.

Contiguous MSA. In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

Continuously assisted. An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

Contract. (See Housing Assistance Payments Contract.)

Contract authority. The maximum annual payment by HUD to a PHA for a funding increment.

Cooperative (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type: see §982.619.

Covered families. Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

Dating violence. 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

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.

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

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 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. *(CFR 5.603)*

Facility. All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

Fair Housing Act means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988

Fair market rent (FMR). The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the Federal Register in accordance with 24 CFR part 888.

Family. Includes but is not limited to the following, 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 PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see §982.515(a).

Family Unification Program. A HUD program under which housing choice vouchers are provided to two different populations including Youth between 18-21 years of age who left foster care at age 16 or older and lack adequate housing.

Family unit size. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

Federal agency. A department of the executive branch of the Federal Government.

Foster Child Care Payment. Payment to eligible households by state, local, or private agencies appointed by the State, to administer payments for the care of foster children.

Full-time Student. A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (*CFR 5.603*)

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.***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 the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

Head of household*.* The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Housing assistance payment*.* The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Housing agency (HA). A State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. ("PHA" and "HA" mean the same thing.)

Housing Opportunities for Persons with AIDS (HOPWA) Program. A program was established by HUD to address the specific needs of persons living with HIV/AIDS and their families.

Housing Quality Standards*.* The HUD minimum quality standards for housing assisted under the voucher program.

HUD. The Department of Housing and Urban Development.

Imputed Asset. Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

Imputed Income. HUD passbook rate multiplied by the total cash value of assets. Calculation used when net family assets exceed $5,000.

Imputed welfare income. An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family's annual income and therefore reflected in the family's rental contribution.

Income. Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

Income For Eligibility. Annual Income.

Income information means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the State's unemployment compensation law, including any Social Security Number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, Employer

Identification Number of an employer reporting wages under a State unemployment compensation law

- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
- Unearned IRS income and self-employment, wages and retirement income
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

Individual with handicaps. Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

Initial PHA. In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Jurisdiction. The area in which the PHA has authority under State and local law to administer the program.

Landlord. Either the owner of the property or his/her representative or the managing agent or his/her representative, as shall be designated by the owner.

Lease. A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

Live-in aide. A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

Living/Sleeping Room. A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space. A bedroom or living/sleeping room must have at least one window and two electrical outlets in proper operating condition. See HCV GB p. 10-6 and 24 CFR 982.401.

Local Preference. A preference used by the PHA to select among applicant families.

Low Income Family. A family whose income does not exceed 80% of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80% for areas with unusually high or low incomes.

Manufactured home. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see §982.620 and §982.621.

Manufactured home space. In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See §982.622 to §982.624.

Medical expenses. Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance. (A deduction for elderly or disabled families only.) These allowances are given when calculating adjusted income for medical expenses in excess of 3% of annual income.

Mental Health Services Act (MHSA) Housing Program. State of California housing program that offers permanent financing and capitalized operating subsidies for the development of permanent supportive housing, including both rental and shared housing, to serve persons with serious mental illness and their families who are homeless or at risk of homelessness.

Merger Date. October 1, 1999.

Minor. A member of the family household other than the family head or spouse, who is under 18 years of age.

Mixed family. *A* family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Mutual housing. Included in the definition of "cooperative."

National. *A* person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Near-elderly family. A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

Net family assets. (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

- In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income

distributed from the trust fund shall be counted when determining annual income under §5.609.

- In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Noncitizen. *A* person who is neither a citizen nor national of the United States.

Notice of Funding Availability (NOFA). For budget authority that HUD distributes by competitive process, the Federal Register document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

Office of General Counsel (OGC). The General Counsel of HUD.

Overcrowded. A unit that does not meet the following HQS space standards: (1) Provide adequate space and security for the family; and (2) Have at least one bedroom or living/sleeping room for each two persons.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

PHA Plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

PHA's quality control sample. An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

Participant *(participant family).* A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

Payment standard*.* The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

Persons With Disabilities. A person who has a disability as defined in 42 U.S.C. 423 or a developmental disability as defined in 42 U.S.C. 6001. Also includes a person who is determined, under HUD regulations, to have a physical or mental impairment that is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. For purposes of reasonable accommodation and program accessibility for persons with disabilities, means and "individual with handicaps" as defined in 24 CFR 8.3. Definition does not exclude persons who have AIDS or conditions arising from AIDS, but does not include a person whose disability is based solely on drug or alcohol dependence (for low-income housing eligibility purposes). See "Individual with handicaps"

Portability. Renting a dwelling unit with Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

Private space. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

Processing entity. The person or entity that, under any of the programs covered, is responsible for making eligibility and related determinations and any income reexamination. In the Section 8 program, the "processing entity" is the "responsible entity."

Project owner. The person or entity that owns the housing project containing the assisted dwelling unit.

Public Assistance. Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by Federal, state, or local governments.

Public Housing Agency *(PHA)*. Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

Reasonable rent. A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

Receiving PHA. In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

Recertification. Sometimes called reexamination. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.

Remaining Member of Tenant Family. Person left in assisted housing who may or may not normally qualify for assistance on own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

Rent to owner. The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

Residency Preference. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

Residency Preference Area. The specified area where families must reside to qualify for a residency preference.

Responsible entity. For the public housing and the Section 8 tenant-based assistance, project-based voucher assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

Secretary. The Secretary of Housing and Urban Development.

Section 8. Section 8 of the United States Housing Act of 1937.

Section 8 covered programs. *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.

Sexual Assault. Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent(42 U.S.C. 13925(a)).

Sexual Orientation. Homosexuality, heterosexuality or bisexuality.***Shared housing.*** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see §982.615 to §982.618.

Single Person. A person living alone or intending to live alone.

Single room occupancy housing *(SRO).* A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see §982.602 to §982.605.

Social Security Number (SSN). The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

Special admission. Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

Special housing types. See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

Specified Welfare Benefit Reduction. Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

Spouse. The marriage partner of the head of household.

Stalking. 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 others; or suffer emotional distress.

State Wage Information Collection Agency (SWICA). The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

Subsidy standards. Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. Stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension. This practice is also called "tolling".

Tenancy Addendum. For the Housing Choice Voucher Program, the lease language required by HUD in the lease between the tenant and the owner.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant rent to owner. See "Family rent to owner".

Term of Lease. The amount of time a tenant agrees in writing to live in a dwelling unit.

Total Tenant Payment (TTP). The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

Uniform Property Conditions Standards.

Unit. Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

Utility hook-up charge. In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

Vacancy Loss Payments. (*Applies only to Project-based Voucher and Moderate Rehabilitaion Program HAP Contracts).* When a family vacates its unit in violation of its lease, the owner is eligible for 80% of the contract rent for a vacancy period of up to one additional month, (beyond the month in which the vacancy occurred) if s/he notifies the PHA as soon as s/he learns of the vacancy, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

Very Low Income Family. A low-income family whose annual income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

Violent criminal activity. Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

Voucher *(Housing Choice Voucher).* A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

Voucher holder. A family holding a voucher with an unexpired term (search time).

Voucher program. The housing choice voucher program.

Waiting list admission. An admission from the PHA waiting list.

Welfare assistance. Income assistance from Federal or State welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. FOR THE FSS PROGRAM (984.103(b)), "welfare assistance" includes only cash maintenance payments from Federal or State programs designed to meet a family's ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or Social Security.

Welfare-to-work (WTW) family. A family assisted by a PHA with Voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

Work-Eligible Household. A family whose head, spouse, or sole member is a person that does not meet the qualification for senior nor disabled.