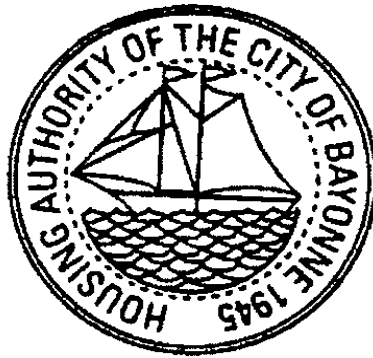


# **HOUSING AUTHORITY OF THE CITY OF BAYONNE**



## **ADMINISTRATIVE PLAN**

*for the*

## **HOUSING CHOICE VOUCHER (Section 8) PROGRAM | HOTMA Update**

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# Chapter 1

## **STATEMENT OF POLICIES AND OBJECTIVES**

### **INTRODUCTION**

The Section 8 Housing Choice Voucher Program (HCVP) was enacted as part of the Housing and Community Development Act of 1974, which re-codified the U.S. Housing Act of 1937 (the “Act”). The Act has been amended from time to time, and its requirements, as they apply to the Section 8 Housing Choice Voucher Program, are described in and implemented through this Administrative Plan.

Administration of the Section 8 Housing Choice Voucher Program is the responsibility of the Housing Authority of the City of Bayonne (the “Authority”) and shall be in compliance with the U. S. Department of Housing and Urban Development's (“HUD”) Section 8 Regulations as well as all Federal, State and local Fair Housing Laws and Regulations. The jurisdiction of the Authority is the City of Bayonne.

The Authority may utilize in-person, a virtual platform, or a combination thereof in which to manage and operate the HCV Program which will provide more efficient and expedient services to applicants, participants and landlords.

#### **A. PURPOSE OF THE PLAN**

The purpose of the Administrative Plan (the “Plan”) is to establish policies for operating the program in a manner consistent with HUD requirements and local objectives. The Plan covers both admission and continued participation in the HCV Program. The Plan defines the Authority’s local policies for operation of the program in accordance with Federal laws and regulations. All issues related to the Section 8 HCVP not addressed in this document are governed by Federal regulations, HUD memos, notices and guidelines or other applicable law.

The Authority is responsible for complying with all changes in HUD regulations pertaining to this Program. On an ongoing basis, the Authority may make minor, non-substantive modifications to the Administrative Plan in order to clarify existing policies and procedures and/or to correct editing errors. If such changes conflict with this Plan, HUD regulations will have precedence. During times of a federal, state and/or local emergency, the Executive Director or designee shall have discretion to modify non-statutory policies and procedures to expedite operations and actions that benefit and safeguard Participants and staff. The original Plan and any changes must be approved by the Board of Commissioners of the agency and a copy provided to HUD.

On July 29, 2016, the Housing Opportunity Through Modernization Act of 2016 (HOTMA) was signed into law. HOTMA made numerous changes to statutes governing HUD programs, including sections of the United States Housing Act of 1937. Title I of HOTMA contains 14 different sections that impact the public housing and Section 8 programs. The Final Rule implementing broad changes to income and asset in Sections 102

and 104 of HOTMA, and for PHAs that administer the public housing program over-income provisions in Section 103, was officially published in the Federal Register on February 14, 2023. On September 29, 2023, HUD issued notice PIH 2023-27, which provided guidance to PHAs on the implementation of the program changes described in the Final Rule.

## **B. LOCAL OBJECTIVES**

The Section 8 HCV Program is designed to achieve four major objectives:

1. To provide decent, safe and sanitary housing for very low-income families while maintaining their rent payments at an affordable level;
2. To promote freedom of housing choice for very low-income families of all races and ethnic backgrounds;
3. To assist the local economy by increasing the occupancy rate and the amount of money flowing to the community; and
4. To encourage self-sufficiency of participant families.

## **C. FAIR HOUSING/NON-DISCRIMINATION POLICY**

The Authority shall not discriminate on the basis of race, color, sex, religion, familial status, disability, national origin, marital status, gender identity or sexual orientation in the administration of the Section 8 Housing Choice Voucher Program. The Authority will comply with all applicable federal, state, and local nondiscrimination laws and with the rules and regulations governing fair housing and equal opportunity in housing and employment.

The Authority will make determinations of eligibility for the Section 8 Housing Choice Voucher Program in accordance with the eligibility requirements provided for such program by HUD, and such program shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. Gender identity means actual or perceived gender-related characteristics with which a person identifies regardless of sex assigned to that person at birth. Sexual orientation means one's emotional or physical attraction to the same and/or opposite sex.

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

**D. ACCOMMODATIONS POLICY [24 CFR 982.552(c)(2)(iv)]**

Sometimes, people with disabilities may need a reasonable accommodation in order to take full advantage of the Authority's programs and related services. When such accommodations are granted, they do not confer special treatment or advantage for the person with a disability. Rather, they make the Program accessible to them in a way that would otherwise not be possible due to their disability. This policy clarifies how people can request accommodations and the guidelines the Authority will follow in determining whether it is reasonable to provide a requested accommodation. Since disabilities are not always apparent, the Authority will ensure that all applicants/participants/owners are aware of the opportunity to request reasonable accommodations.

This policy is applicable to all Authority situations described in this Plan when a family initiates contact with the Authority, when the Authority initiates contact with a family, including when a family applies, and when the Authority schedules or reschedules appointments of any kind.

The Authority's operating policies and practices will be designed to provide assurances that all persons with disabilities will be provided reasonable accommodation so that they may fully access and utilize the housing programs and related services. The availability of specific accommodations will be made known by including notices on Authority forms and letters to all families, and all requests will be verified so that the Authority can properly accommodate the need presented by the disability.

If an applicant or participant has a disability and think they might need or want a reasonable accommodation, they may request it at any time in the application process or at any time they need an accommodation. This is up to them. If they would prefer not to discuss their situation with the Authority that is their right. Any request for an accommodation that would enable a Public Housing tenant or Section 8 Participant to materially violate essential lease terms or program obligations will not be approved, *i.e.* allowing nonpayment of rent, destruction of property, disturbing the peaceful enjoyment of others, etc.

If more than one accommodation is equally effective in providing access to the Authority's programs and services, the Authority retains the right to select the most efficient or economic choice.

**Live-in Aide 24 CFR Section 5.403.** A live-in aide is a person who resides with one or more elderly persons near elderly persons or disabled persons. A live-in aide is not a member of the assisted family and is not entitled to the voucher as a remaining member of the participant's family.

When Section 8 HCVP applicants are denied placement on the waiting list or the Authority is terminating assistance, the family will be informed that the presence of a disability may be considered as a mitigating circumstance during the informal review process (see Chapter 19 Complaints and Appeals) of informal reviews/hearing on the matter.

Examples of mitigating circumstances are: (a) A person with a cognitive disorder may not have understood the requirement to report increases in income: (b) Minor criminal records

for public drunkenness may be due to medication; and (c) prior incarcerations for being disorderly may be due to an emotional disorder.

Applicants/participants who think they have been discriminated against on the basis of a disability may file a complaint with the Authority for investigation and resolution/response. The procedure for reporting, investigating and resolving/responding to such complaints shall be as follows:

- a. Applicant/participants will be asked to report/file complaints in writing to the Authority's Executive Director but are not compelled to do so.
- b. As soon as possible, but no later than ten (10) calendar days after receiving the complaint, the Executive Director/designee or investigator appointed by the Executive Director, if the complaint is against the Executive Director, will interview the applicant/participant. If the applicant/participant is reluctant to sign a written complaint, the Executive Director or investigator will prepare written notes of the date, time and place of the complaint and the specific allegations. These notes will be read back to the applicant/participant who will be asked to affirm, preferably in writing the information's accuracy.
- c. The Executive Director/designee will render a decision within fourteen (14) calendar days after a thorough investigation of the complaint is completed. If the validity of a complaint cannot be determined, or the complaint is groundless, the complaining applicant/participant shall be notified in writing.
- d. If the investigation reveals that the complaint is justified and substantiated, the Executive Director/designee will formulate a corrective action plan. The complaining party will notified in writing that it appears that the complaint was justified and an appropriate corrective action plans has been formulated. A copy of the plan shall be attached to the letter. The plan shall provide for appropriate remedial action to prevent a recurrence of the wrongful act or behavior.

It is to be noted that participants in the Section 8 Program have the choice of utilizing the complaint procedure set forth above or the Authority's Section 8 informal hearing procedures.

**E. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)**

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the 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*.

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

LEP is 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 HCV applicants and participants, and parents and family members of applicants and participants.

In order to determine the level of access needed by LEP persons, the BHA 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 Housing Choice Voucher program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the BHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the BHA.

Resources available to the BHA may include obtaining written or oral translation services or drawing on the language skills of staff members. Also, if the family has a member who speaks English or brings another person along to interpret, agreeing to communicate through these individuals could be utilized. Additionally, the BHA will allow a reasonable time for documents to be translated.

## **ORAL INTERPRETATION**

### BHA Policy

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

When exercising the option to conduct remote briefings, informal reviews, informal hearings; the BHA will coordinate with a remote language interpretation service which uses video conferencing technology over voice-only interpretation.

The BHA 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 LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the BHA. The interpreter may be a family member or friend. The BHA could also refer applicants and participants to agencies who assist ethnic groups with translation services. The Authority may also utilize telephonic or other available forms of translation services, as needed.

Where feasible and possible the BHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents.



The Authority has bilingual staff to assist non-English speaking families in the following languages: Spanish, Arabic (Egyptian dialect), and Polish.

## **WRITTEN TRANSLATION**

### **BHA Policy**

In order to comply with written-translation obligations, the BHA will translate documents as needed.

In determining whether it is feasible to translate documents into other languages, the Authority will consider the following factors:

- Number of applicants and participants who do not speak English.
- Cost of translation into the other language per/client who speaks the language.
- The availability of organizations to translate documents, letters and forms for non- English speaking families.
- Availability of bi-lingual staff to explain un-translated documents to clients.

## **F. FAMILY OUTREACH**

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

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

## **G. OWNER OUTREACH**

The Authority encourages owners of decent, safe and sanitary housing units to lease to Section 8 HCVP families. The Authority maintains a list of interested landlords available for the Section 8 HCV Program. Printed material is offered to acquaint owners and managers with the opportunities available under the program.

## **H. PRIVACY RIGHTS**

Applicants and participants, including all adults, eighteen (18) years or older in their households, are required to sign the HUD 9886 Authorization for Release of Information. This document incorporates the Federal Privacy Act Statement and describes the conditions under which HUD will release family information.

The Authority's policy regarding release of information is in accordance with State and local laws which may restrict the release of family information. In accordance with HUD requirements, the Authority will furnish prospective owners with the family's current address as shown in the Authority's records and, if known to the Authority, the name and address of the landlord at the family's current and prior address. A statement of the Authority's policy on release of information to prospective landlords will be included in the briefing packet, which is provided to the family.

Authority staff will not discuss family information contained in files unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Any and all information which would lead one to determine a person's disability will be removed from a client's file and destroyed or returned to the individual after its use. Client medical information will be limited to the 504 Coordinator and to calculate medical expenses.

## **I. MONITORING PROGRAM PERFORMANCE**

The BHA's policies, procedures, and tracking systems are designed to respond to the goals, objectives, and performance measures of HUD's Section 8 Management Assessment Program (SEMAP). To comply with HUD and other pertinent regulations, the BHA will maintain records, reports and other documentation for a period of time that is in accordance with HUD requirements and in a manner that will allow an auditor, housing professional or other interested party to assess BHA's operational procedures objectively and with accuracy.

Specifically, records and reports will be maintained for the purpose of complying with the following SEMAP performance measures:

- The BHA has written policies in its administrative plan for selecting applicants from the waiting list, and the BHA follows these policies when selecting applicants for admission from the waiting list.
- The BHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units.
- At admission and reexamination, the BHA verifies and correctly determines adjusted annual income for each assisted family and, where the family is responsible for utilities under the lease, the BHA uses the appropriate utility allowances in determining gross rent.
- The BHA maintains an up-to-date utility allowance schedule.
- A BHA supervisor or other qualified person re-inspects a sample of units during the BHA fiscal year. The sample shall be based on the following calculation: 2000 units must have 30 quality control inspections completed and 1 additional inspection for each increment of 200 units over 2000.

- Following each failed HQS unit inspection, any cited life-threatening HQS deficiencies are corrected within 24 hours and all other cited HQS deficiencies are corrected within 30 calendar days from the inspection or any BHA-approved extension.
- The BHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration.
- Voucher payment standards do not exceed 110% of the FMR or HUD approved exception rent limit and are not less than 90% of the current FMR/exception rent limit, unless otherwise approved by HUD.
- The BHA completes a reexamination for each participating family at least every twelve months.
- The BHA correctly calculates tenant rent and the family's share of the rent to owner in the Voucher Program.
- Newly leased units pass HQS inspection on or before the beginning date of the assisted lease and HAP contract.
- The BHA inspects each unit under contract at least annually but has the discretion to conduct bi-annual inspections either in person or utilizing remote video methods.
- The BHA executes HAP contracts on behalf of eligible families for the number of units under budget for at least one year.
- If the Authority has an FSS Program, that the BHA has enrolled families in the FSS program as required and has made progress in supporting FSS as measured by the percentage of current FSS participants with escrow account balances.

*In order to ensure quality control, supervisory staff or contract firms annually complete the following:*

- Audit of two percent (2%) of recent annual reexamination files.
- Pursuant to Federal Register, Vol. 79 No. 122, dated June 25, 2014, a BHA will be allowed to conduct inspections at least bi-annually. If a unit has been inspected within 12 months prior to date of this Federal Register Notice, the BHA will not have to re-inspect the unit for 24 months after the last inspection.

**Reports will be maintained for:**

- Monitoring funding availability, to ensure the Authority is at maximum lease up but not over-leased.
- Tracking outstanding Housing Choice Vouchers for expiration or suspension.
- Timeliness of annual activities.
- Numbers of failed inspections and abatements.
- Number and reason for moves and terminations of assistance.
- Repayment of amounts owed the Authority.

## **J. FRAUD & PROGRAM ABUSE**

The BHA is responsible for reporting any suspected fraud to HUD's office of the Inspector General's Office of Investigation and to other Federal, State and Local law enforcement authorities.

**Employee Fraud Policy:** Examples of activities constituting fraud and related criminal activities but are not limited to:

1. Bribing and/or kickbacks;
2. False claims or bid-rigging;
3. Theft, embezzlement or other misapplication of funds or assets;
4. Forgery as alteration of documents;
5. Impropriety with respect to reporting financial transactions;
6. Profiting on insiders knowledge;
7. Destruction or concealment of records or assets.

See Chapter 20, "Program Integrity" for greater detail on employee, owner and participant fraud.

## **K. WELFARE TO WORK HOUSING VOUCHERS**

- When initially selected, the family must fit into one of the following TANF-related categories:
  - Family is eligible to receive assistance or services funded by TANF.
  - Family is currently receiving assistance or services funded by TANF.
  - Family has received assistance or services funded by TANF within the last two (2) years.
- Section 8 tenant-based assistance must be critical to the family's ability to obtain or retain employment.

***BHA's must work closely with their local TANF agency to:***

- Identify the target population that the program will serve.
- Develop and implement outreach strategies to market the program to one or more of the TANF-eligible populations that their program will serve (is eligible to receive TANF, is currently receiving TANF, or received TANF within the last two (2) years.
- Establish a process and clarify related roles and responsibilities for determining and verifying TANF eligibility.

## **L. TERMINOLOGY**

The Housing Authority of the City of Bayonne is referred to as "Authority," "BHA" or "Housing Authority" throughout this document.

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

person family.

“Participant” is used to refer to a person who is part of the Section 8 Housing Choice Voucher Program (HCVP) administered by the Authority.

See Glossary for other terminology.

## Chapter 2

### ELIGIBILITY FOR ADMISSION

#### INTRODUCTION

This Authority defines both HUD's and the Authority's criteria for admission and denial of admission to the program. The policy of this Authority is to strive for objectivity and consistency in applying these criteria to evaluate the eligibility of families who apply. The Authority staff will review all information provided by the family carefully and without regard to factors other than those defined in this Chapter. Families will be provided the opportunity to explain their circumstances, to furnish additional information, if needed, and to receive an explanation of the basis for any decision made by the Authority pertaining to their eligibility.

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

The HUD eligibility criteria are:

- An applicant must be a "family" as defined by HUD;
  - An applicant's total household income must be within the appropriate Income Limits; An applicant must furnish Social Security Numbers;
  - An applicant who is a student of higher education who does not live with their parents must meet additional eligibility criteria in Section E; and
  - An applicant must furnish evidence of Citizenship/Eligible Immigrant Status.
- Not currently be receiving a duplicative subsidy.  
Meet net asset and property ownership restriction requirements.

Additional criteria for eligibility are found in Section F, "Suitability of Family," and pertains to the disclosure of Social Security numbers, background screening for criminal and other offenses, and the use of Enterprise Income Verification (EIV) searches.

The Family's initial eligibility for placement on the waiting list will be made in accordance with the eligibility factors.

Evidence of Citizenship/Eligible Immigrant Status will not be verified until the family is selected from the waiting list for issuance of a Voucher, unless the Authority determines that such eligibility is in question, whether or not the family is at or near the top of the waiting list.

A. **FAMILY AND HOUSEHOLD [24 CFR 5.403; FR Notice 02/03/12; Notice PIH 2014 20; and FR Notice 2/14/23]**

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

**Family:**

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

HUD includes, but is not limited to the following, regardless actual or perceived sexual orientation, gender identity, or marital status,

- A single person, who may be an elderly person, disabled person, near-elderly person;
- Any other single person; an otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H));
- Is homeless or is at risk of becoming homeless at age 16 or older;
- A group of persons residing together. Such group includes but is not limited to:
  - A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
  - A pregnant woman only, and no other persons must be treated as a two-person family;
  - An elderly family (a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons, each of whom are at least 62, living together, or one or more persons who are at least 62 living with one or more live-in aides [24 CFR 5.100 and 5.403, FR Notice 02/03/12];
  - A near-elderly family (a family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below 62; or two or more persons, each of whom are between the ages of 50 and 62, living together; or one or more persons who are between the ages of 50 and 62 living with one or more live-in aides [24 CFR 5.100 and 5.403, FR Notice 02/03/12];
  - A disabled family (a family whose head (including co-head), spouse, or sole member is a person with a disability; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides;
  - A 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), and the remaining member of a tenant family

The BHA has the discretion to determine if any other group of persons qualifies as a family.

Gender Identity means actual or perceived gender characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

## BHA Policy

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.

Each family must identify the individuals to be included in the family at the time of application and must notify the BHA if the family's composition changes.

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

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

### **Family Breakup [24 CFR 982.315; Notice PIH 2017-08]**

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

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, stalking or human trafficking, the Authority must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, stalking and human trafficking, see the full VAWA policy attached.)
- In accordance with Notice PIH 2017-08, for HUD-Veterans Affairs Supportive Housing (HUD-VASH) vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the victim must continue to be assisted. Upon termination of the perpetrator's HUD-VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the victim will continue to use the HUD-VASH voucher, which must be issued to another eligible family upon the voucher's turnover.
- If a court determines the disposition of property between members of the assisted family, the BHA is bound by the court's determination of which family members continue to receive assistance.

## BHA Policy

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

If a family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted. Other former family members may make a new application with a new application date if the waiting list is open.



In the absence of a judicial decision or an agreement among the original family members, the Authority will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the Authority will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, 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 involved.

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

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

If dependents are the only “remaining members of a tenant family” and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section b, for the policy on “Exceptions to Subsidy Standards – Changes in Household Composition.

**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.

**BHA Policy**

The family may designate any qualified family member as the head of household.

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

**Spouse of Head of Household:**

Spouse means marriage partner of the head of household. A marriage partner includes the partner in a common law marriage as defined in state law.

**BHA Policy**

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

The definition of spouse is: the marriage partner who, in order to dissolve the relationship, would have to be divorced.

**Co-Head of Household:**

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

**BHA Policy**

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

**Other Adult of Household:**

Other adult means a family member, other than the Head, spouse, or co-head, who is 18 years of age or older. Foster adults and Live-In-Aides are not considered other adults.

**DEPENDENTS AND MINORS [24 CFR 5.603]**

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

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, cohead, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a dependent allowance as described in Chapter 7.

**Joint Custody of Dependents**

**BHA Policy**

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

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the BHA 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.

**FULL-TIME STUDENT [24 CFR 5.603; HCV 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 allowance, and (2) the earned income of such an FTS is treated differently from the income of other family members.

## **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 2-1 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.

### **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 the disabled family allowance as described in Chapter 7.

## **GUESTS [24 CFR 5.100]**

Visitors/Guests: A guest means a person temporarily staying in the unit with the consent of the tenant or other member of the household who has express or implied authority to consent on behalf of the tenant.

### BHA Policy

Any adult not included on the HUD 50058 who has been in the unit more than fourteen (14) consecutive calendar days, or a total of thirty (30) days in a twelve (12) month period, will be considered to be living in the unit as an unauthorized household member. Absence of evidence of any other address will be considered verification that the visitor is an unauthorized member of the household.

Statements from neighbors and/or the landlord will be considered in making the determination. Use of the unit address as the visitor's current residence for any purpose that is not explicitly temporary shall be construed as permanent residence. The burden of proof that the individual is a visitor rests on the family. In the absence of such proof, the individual will be considered an unauthorized member of the family, and the Authority will terminate assistance since prior approval was not requested for the addition.

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

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 household more than 50% of the time, are not subject to the time limitation of

guests. In a joint custody arrangement, if the minor is in the household less than one hundred twenty (120) days per year; the minor will be considered to be an eligible visitor and not a family member.

## **FOSTER CHILDREN AND FOSTER ADULTS [24 CFR 5.603]**

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

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

Foster children and foster adults who are living with an applicant or who have been approved by the BHA to live with a participant 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; HUD-50058 IB, p. 13].

### BHA Policy

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.

## **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, and court order.

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

#### BHA Policy

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

## **Absent Students**

### BHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the BHA 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.

### BHA Policy

If a child has been placed in foster care, the BHA 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**

### BHA Policy

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

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

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].

### BHA Policy

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

The BHA will request verification of the family member's permanent absence from a responsible medical professional. If the responsible medical professional cannot provide a determination, the person will be considered temporarily absent. If the family certifies that the family member is confined on a permanent basis, they may present, and the BHA will consider, any additional documentation or evidence.

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

### BHA Policy

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

**Live-In Aides:** A household may include a live-in aide provided that such live-in aide:

- Is determined by the Authority to be essential to the care and well-being of an elderly person, a near elderly person, or a person with a disability. A near elderly person may be defined as someone at least 50 years of age;
- Is not obligated for the support of the person(s); and
- Would not be living in the unit except to provide care for the person(s) and does not have a right to the apartment or to the Section 8 rental assistance subsidy.
- Live-in aide will be required to sign a consent form allowing the Authority to conduct a criminal background check in accordance with the Authority's Administrative Plan.

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

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

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

Family members of a live-in attendant may also reside in the unit providing doing so does not increase the subsidy by the cost of an additional bedroom and that the presence of the live-in's family members does not overcrowd the unit.

A *live-in aide* may only reside in the unit with the approval of the Authority. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or caseworker. The verification provider must certify that a live-in aide is essential for daily care of the family member who is elderly, near-elderly or disabled. For continued approval, the family must submit a new, written request-subject to BHA verification-at each annual reexamination.

In addition, 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 should not be approved for a live-in aide under these circumstances.

The Authority will not approve a person as a live-in aide, and may withdraw such approval if:

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity; or
- The person currently owes rent or other amounts to the Authority or to another Authority in connection with Section 8 or public housing assistance under the 1937 Act.

**Split Households Prior to Voucher Issuance:** When a family on the waiting list splits into two (2) otherwise eligible families and the new families both claim the same placement on the waiting list, and there is no court determination, the Authority will make the decision taking into consideration the following factors:

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

**Multiple Families in the Same Household:** When families apply which consist of two (2) families living together, (such as a mother and father, and a daughter with her own husband or children), if they apply as a family unit, they will be treated as a single family unit.

**Joint Custody of Children:** Children who are subject to a joint custody agreement, but live with one parent at least fifty one percent (51%) of the time, will be considered members of the household. "Fifty one percent (51%) of the time" is defined as one hundred eighty three (183) days of the year, which do not have to run consecutively.

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

## **B. INCOME ELIGIBILITY AND TARGETING**

### **Income Limits**

HUD establishes income limits for all areas of the country and publishes them annually in the *Federal Register*. They are based upon estimates of median family income with adjustments for family size. The income limits are used to determine eligibility for the program and for income targeting purposes as discussed in this section.

## **Definitions of the Income Limits [24 CFR 5.603(b)]**

*Low-income family* means 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* means 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* means a family whose annual income does not exceed the higher of the poverty guidelines established by the Department of Health and Human Services or 30 percent of the median income for the area, adjusted for family size.

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

## **Using Income Limits for Eligibility [24 CFR 982.201 and Notice PIH 2023-27]**

Income limits are used for eligibility only at admission. Income eligibility is determined 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. In order to be income eligible, an applicant 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; 24 CFR 982.201(b)]

### BHA Policy

The BHA 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 selected from the BHA’s waiting list.

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 the BHA to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the BHA plan and the consolidated plans for local governments within the BHA’s jurisdiction.

### BHA Policy



The BHA has not established any additional categories of eligible low-income families.

### **Using Income Limits For Targeting [24 CFR 982.201]**

Not less than seventy-five percent (75%) of new admissions to the tenant-based HCV program must have incomes at or below thirty percent (30%) of the area median. Other admissions generally may be at or below eighty percent (80%) of the area median.

Extremely Low Income (“ELI”) families whose incomes meet the very low-income threshold (50% of area median income) and do not exceed the higher of 30 percent of the area median income or the federal poverty level.

In some communities with very low median incomes, the federal poverty level may equal or exceed the very low-income (VLI) limit for some or all household sizes. (in general, a VLI family is defined as a family whose income does not exceed 50 percent of the area median income.) In these relatively rare instances, the ELI limit is set at the VLI limit, and consequently any family whose income meets the VLI limit also qualifies as an ELI family.

For admission to the program (initial lease-up), the family must be within the very low-income limit of the jurisdiction where they want to live.

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 counted for income targeting purposes.

**Portability:** For initial lease-up, families who exercise portability must be within the very low income limit for the jurisdiction of the receiving Authority in which they want to live.

### **C. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E]**

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

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the BHA’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 only a signed declaration as verification of their status. However, HUD regulations permit the BHA to request additional documentation of their status, such as a passport.

### **BHA Policy**

Family members who declare citizenship or national status will not be required to provide additional documentation unless the BHA 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 BHA efforts to verify their immigration status as described in Chapter 8. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

### ***Ineligible Noncitizens***

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The BHA 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 assistance 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 7 for a discussion of how rents are prorated, and Chapter 20 for a discussion of informal hearing procedures.

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

The BHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the BHA that the individual or at least one family member is eligible. Verification of eligibility for this purpose occurs when the individual or family members have submitted documentation to the BHA in accordance with program requirements [24 CFR 5.512(a)].

### **BHA Policy**

The BHA will not provide assistance to a family before the verification of at least one family member.

When the BHA 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 review with the BHA. The informal review with the BHA 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 review process.

Informal hearing procedures are contained in Chapter 20.

**Appeals:** For this eligibility requirement only, the applicant is entitled to a hearing exactly like those provided for participants.

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

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

If an individual qualifies for a time extension for the submission of required documents, the BHA 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.

## BHA Policy

The BHA will verify the citizenship status of applicants at the time other eligibility factors are determined.

### **D. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2018-24]**

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. 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. A detailed discussion of acceptable documentation is provided in Chapter 8.

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

### **E. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.232; HCV GB, p. 5-13]**

HUD requires that each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, the form HUD-52675 Debts Owed to Public Housing Agencies and Terminations, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 8 provides detailed information concerning the consent forms and verification requirements. The consent form remains effective until the family is denied assistance, assistance is terminated, or the family provides written notification to revoke consent.

The BHA must deny admission to the program if any member of the applicant family fails to sign and submit the consent forms for obtaining 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, revokes their consent with respect to the ability of the BHA to access financial records from financial institutions, unless the BHA 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)].

### BHA Policy

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

## **F. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612, FR Notice 4/10/06, FR Notice 9/21/16]**

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, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, 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 their parents in accordance with BHA 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 BHA will rely on the following definitions [FR Notice 4/10/06, FR Notice 9/21/16].

#### ***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***

### BHA Policy

The BHA will consider a student "independent" from their 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 their 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:

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

The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older

The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence

The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes

The individual is a graduate or professional student

The individual is married

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

The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:

A local educational agency homeless liaison

The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director

A financial aid administrator

The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances

The individual was not claimed as a dependent by their 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 their parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

If the BHA determines that an individual meets the definition of a *vulnerable youth* such a determination is all that is necessary to determine that the person is an *independent student* for the purposes of using only the student's income for determining eligibility for assistance.

The BHA will verify that a student meets the above criteria in accordance with the policies in chapter 8.

### ***Institution of Higher Education***

The BHA 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 2-2).

### ***Parents***

#### BHA 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).

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

The BHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a *person with disabilities* (see Exhibit 2-1).

### ***Veteran***

#### BHA 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.

### ***Vulnerable Youth***

#### BHA Policy

A *vulnerable youth* is an individual who meets the U.S. Department of Education's definition of *independent student* in paragraphs (b), (c), or (h), as adopted in Section II of FR Notice 9/21/16:

The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or

older

The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence

The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:

A local educational agency homeless liaison

The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director

A financial aid administrator

### **Determining Student Eligibility**

If a student is applying for assistance on their own, apart from their parents, the BHA 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 BHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from their 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.

#### BHA Policy

For any student who is subject to the 5.612 restrictions, the BHA 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 their 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 the BHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the BHA will send a notice of denial in accordance with the policies in Section 16, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16.

### ***Determining Parental Income Eligibility***

#### BHA 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, the BHA will determine the income



eligibility of the student's parents as follows:

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

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

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

If the student has been living with one of their parents and has not had contact with or does not know where to contact their other parent, the BHA 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. The BHA 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, the BHA will use the income limits for the jurisdiction in which the parents live.

Noncitizen students, even those with eligible immigration status for purposes of HUD's financial assistance, are not eligible to receive housing assistance. When a noncitizen student is accompanied by a noncitizen spouse and/or noncitizen minor children, those family members are also ineligible for assistance. If the noncitizen student and noncitizen spouse have citizen children, the whole family is still ineligible for assistance. However, if a non-citizen student has a citizen spouse, the citizen spouse and children, if any, would be eligible for assistance. In that case, assistance would be prorated to ensure that the assistance goes only to those family members with eligible immigration status.

#### **G. SUITABILITY OF FAMILY**

The Authority may take into consideration any of the additional criteria for eligibility into the HCVP in Section D above, but may not otherwise screen for factors, which relate to the suitability of the applicant family as tenants. It is the responsibility of the owner to screen the applicants as to their suitability for tenancy.

In accordance with the Fair Chance in Housing Act (FCHA), effective January 1, 2022, the Authority is required to conduct criminal background screenings to determine if any household member is subject to a lifetime sex offender registration requirement for all states in which the household members are known to have lived. The Authority is also required to obtain a criminal background check to determine if any member of the household has a conviction for the manufacture or production of methamphetamine on the premises of federally-assisted housing.

Each adult member of the household must sign written authorization for the Authority to obtain criminal records. Criminal background results, including sex offender results, must not be shared directly with the owner/landlord and must be destroyed once their purpose has been served.

Under the FCHA, the Authority cannot ever consider the following types of criminal records:

- Arrests or charges that did not result in a criminal conviction
- Expunged convictions
- Convictions erased through executive pardon
- Vacated and otherwise legally nullified convictions
- Juvenile adjudications of delinquency
- Sealed records

After making a conditional offer of a voucher, the Authority is permitted to consider the following criminal records:

- Any conviction for murder, aggravated sexual assault, kidnapping, arson, human trafficking, sexual assault, or endangering the welfare of a child in violation of N.J.S.2C:24-4(b)(3);
- Any conviction that requires a lifetime state sex offender registration;
- Any conviction for a 1<sup>st</sup> degree indictable offense, or release from prison, for that offense within the past 6 years;
- Any conviction for a 2<sup>nd</sup> or 3<sup>rd</sup> degree indictable offense, or release from prison for that offense, within the past 4 years;
- Any conviction for a 4<sup>th</sup> degree indictable offense, or release from prison for that offense, within the past 1 year.

If the Authority denies eligibility based on the criminal record, then it may be retained until an informal review, if requested, or until the period to request a review has expired and then it must be destroyed. **See Chapter 16 “Denial or Termination of Assistance” for additional details.**

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

### **Existing Tenant Search**

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

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

### BHA Policy

The BHA will contact the other PHA or owner identified in the report to confirm that the

family has moved out of the unit and obtain documentation of current tenancy status, including a form HUD-50058 or 50059, as applicable, showing an end of participation. The BHA will only approve assistance contingent upon the move-out from the currently occupied assisted unit.

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

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

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

### **BHA Policy**

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

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

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

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

## **EXHIBIT 2-1: 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 their 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; genitourinary; 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 2-2: 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.

## Chapter 3

### APPLYING FOR ADMISSION

#### INTRODUCTION

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

#### A. OPENING/CLOSING OF WAIT LIST and TAKING APPLICATIONS

When the Authority opens the waiting list, the Authority will advertise through public notice in the following newspapers, minority publications and media entities. Location(s), and program(s) for which applications are being accepted in the local paper of record, “minority” newspapers, and other media including:

Newspapers: Jersey Journal, and Bayonne Community News  
Others: BHA’s website @ [www.bayonneha.org](http://www.bayonneha.org)  
Bayonne Cablevision and local agencies  
Minority/education news and local agencies  
Office on Aging  
Bayonne Economic Opportunity Foundation

**The notice will contain:** the dates, times, and the locations where families may apply; the programs for which applications will be taken; a brief description of the program; a statement that Public Housing residents must submit a separate application if they want to apply for Section 8; and limitations, if any, on who may apply.

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

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

**When Application Taking Is Suspended:** The Authority may suspend the acceptance of applications if there are enough local Preference holders to fill anticipated openings for the next twelve (12) months. The waiting list may not be closed if it would have a discriminatory effect inconsistent with applicable civil rights laws. Any time that there are not enough applicants who claim a local preference, the Authority may reopen the list only to applicants who claim a local preference. Suspension of application taking is announced in the same way as opening the waiting list.

The open period shall be long enough to achieve a waiting list adequate to cover projected turnover and new allocations over the next 24 months. The Authority will give at least three (3) days not less than three (3) days' notice prior to closing the list. When the period for accepting applications is over, the Authority will add the new applicants to the list by separating the new applicants into groups based on preferences and ranking applicants within each group by date and time of application.

**Limits on Who May Apply:** When the waiting list is open, any family asking to be placed on the waiting list for Section 8 Rental Assistance will be given the opportunity to complete an application. When the application is submitted to the Authority it establishes the family's date and time of application for placement order on the waiting list.

## **B. APPLICATIONS**

The Authority will utilize an application form. The information is to be filled out by the applicant whenever possible. It may also be mailed to the applicant and, if requested, it will be mailed in an accessible format.

The purpose of the application is to permit the Authority to preliminarily assess family eligibility or ineligibility and to determine placement on the waiting list. The application will contain questions designed to obtain, but not limited to, the following information:

- Names of adult members and age of all members;
- Sex and relationship of all members;
- Street Address and phone numbers;
- Mailing Address (If P.O. Box or other permanent address);
- Amount(s) and source(s) of income received by household members;
- Information regarding disabilities to determine qualifications for allowances and deductions;
- Information related to qualification for preferences;
- Social Security Numbers;
- Race/ethnicity;
- Citizenship/eligible immigration status;
- Convictions for Drug Related or Violent Criminal Activity or any other offense
- Previous address;
- Current and previous landlords' names and addresses;
- Emergency contact person and address;
- Program integrity questions regarding previous participation in HUD programs;

Duplicate applications, including applications from a segment of an applicant household, will not be accepted. Ineligible families will not be placed on the waiting list.

Applications will not require an interview. The information on the application will not be verified until the applicant has been selected for final eligibility determination. Final eligibility will be determined when the full application process is completed and all information is verified.

**When the Authority Will be Able to Offer a HCV Voucher:** Applicants are required to inform the Authority in writing within five (5) business days of changes in family composition, income, and address, as well as any changes in their Preference status. Applicants are also required to respond to requests from the Authority to update information on their application, or to determine their continued interest in assistance.

Failure to provide information or to respond to mailings will result in the applicant being removed from the waiting list. See Chapter 19, "Complaints and Appeals".

### **C. NOTIFICATION OF APPLICANT STATUS**

If, after a review of the application, the family is determined to be preliminarily eligible, they will be notified of the same, in writing, or in an accessible format upon request as a reasonable accommodation. This written notification of preliminary eligibility will be mailed to the applicant by first class mail.

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

### **D. WAIT LIST SELECTION**

When funding is available, families will be selected from the waiting list according to date and time of application and preference category, regardless of family size. When there is insufficient funding available for the family at the top of the list, the Authority will not admit any other applicant until funding is available for the first applicant.

A pool of completed eligible applicant files will be maintained to minimize delays in admissions when funding becomes available. However, families are still offered a voucher in the waiting list sequence. The waiting list contains, but is not limited to, the following information for each applicant listed:

- Applicant Name
- Family Unit Size (number of bedrooms family qualifies for under the Authority Section 8 subsidy standards)
- Date and time of application
- Qualification for any local preference
- Income Information

- Racial or ethnic designation of the head of household

Based on the Authority's turnover and the availability of funding, groups of families will be selected from the waiting list to form a final eligibility "pool." Selection from the pool will be based on waiting list sequence/completion of verification.

#### **E. COMPLETION OF A FULL APPLICATION**

All Ranking or Local Preferences claimed on the application or as a result of any updates to the application, or while the family is on the waiting list will be verified after the applicant is selected from the waiting list and prior to completing the full application.

The qualification for preference must exist at the time the preference is verified regardless of the length of time an applicant has been on the waiting list because the preference is based on current status. After the preference is verified, when the Authority is ready to select applicants, applicants will be required to complete a full application in their own handwriting, unless assistance is needed, or a request for accommodation is made by a person with a disability. Applicants will then be interviewed by Authority staff to review the information on the full application form.

The application will be mailed to the applicant in advance of the interview. All adult members of the household must be present during the interview to complete. The interview may be conducted in person or through a virtual platform.

**Requirement to Attend Interview:** When an applicant is selected from the waiting list, the Authority schedules an interview for the applicant family. The head and spouse and any household member eighteen (18) or older are required to attend the interview.

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

It is the applicant's responsibility to reschedule the interview if she/he misses the appointment. If the applicant does not reschedule or misses one (1) scheduled meeting, the Authority will reject the application. Applicants who fail to appear for the interview and want to reschedule a missed appointment must make the request to reschedule no later than three (3) business days from the original appointment date. The request must be made to the staff person who scheduled the appointment.

If an applicant fails to appear for either interview, without prior approval of the Authority, their application will be denied unless they can provide acceptable documentation to the Authority that an emergency prevented them from calling or attending the meeting. Please note, the Authority, at its sole discretion, consider if unforeseen and/or mitigating circumstances prevented the applicant from appearing or calling for a missed appointment.

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

All adult members eighteen (18) years or older must sign the HUD Form 9886, entitled, the "Release of Information" and the Authority's internal Release of Information form, the application form and all supplemental forms required by the Authority, the declarations and consents related to citizenship/immigration status and any other documents required by the Authority. Applicants will be required to sign specific verification forms for information that is not covered by the HUD form 9886. Failure to do so will be cause for denial of the application for failure to provide necessary certifications and release as required by the Authority. Information provided by the applicant will be verified including information related to family composition, the Criminal Background, credit, income, allowances and deductions, assets, eligible immigration status, full time student status and other factors related to preferences, eligibility and rent calculation. Verifications may not be more than sixty (60) days old at the time of Voucher issuance.

The HUD form 9886 and the Authority's own form for the release of information authorizes HUD and the Authority to obtain third party verification of the following:

- a. Any income information or materials from State Wage Information Collection Agencies ("SWICA")
- b. Income information obtained from previous and current employers.
- c. Credit.

If the Authority determines at or after the interview that additional information or document(s) are needed, the Authority will request the document(s) or information in writing. The family will be given ten (10) working days to supply the information. Failure to respond within the time frame specified will result in the withdrawal of application.

## **F. FINAL DETERMINATION AND NOTIFICATION OF ELIGIBILITY**

After the verification process is completed, the Authority will make a final determination of eligibility. This decision is based upon information provided by the family, the verification completed by the Authority, and the current eligibility criteria in effect. If the family is determined to be eligible, the Authority will mail a notification of eligibility. A briefing will be scheduled for the issuance of a voucher and the family's orientation to the HCV Program. If the applicant is determined ineligible, the applicant has the opportunity to request in writing an informal review within 14 days of the notification.

**Removal from the Waiting List:** Applicants shall be removed from the waiting list for the following reasons:

- Failure to respond to two (2) Authority written communications regarding failure to comply with application update, applicant interview, and applicant briefing requirements. If a letter is returned by the Post Office without a forwarding address, or unclaimed, the applicant will be removed without further notice, and the envelope will be maintained in the file. If a letter is returned with a forwarding address, it will be re-mailed to the address indicated.

- Refusal to accept the offer of a Housing Choice Voucher (Section 8).
- Determined ineligible
- If the applicant falsifies documents or makes false statements with regard to their application in order to qualify for any preference, they will be removed from the waiting list.
- Applicant requests removal

It is the sole discretion of the Authority to review, on a case-by-case basis, whether an applicant will be required to re-apply for Section 8 assistance or is entitled to reinstatement with their original date of application.

#### **G. STATUS INQUIRY**

The Authority will respond by way of status inquiry form concerning an applicant's status on the HCV waiting list. The applicant may only submit an inquiry three (3) times within a calendar year. All inquiries will be responded to within sixty (60) days from the Authority's receipt of the initial inquiry. If the U.S. Post Office returns the Authority's response, the application will be withdrawn from the HCV waiting list without further notice.

**Return of Correspondence by the US Postal Service as Undeliverable:** If correspondence mailed to the mailing address provided by the applicant at the time of application (or to any subsequent address provided by the applicant) is returned as undeliverable by the US Postal Service, the Authority will not make any further attempt to contact the applicant, and the applicant's name will be withdrawn from the waiting list without further notice.

## Chapter 4

### ESTABLISHING PREFERENCES AND MAINTAINING THE WAITING LIST

#### INTRODUCTION

It is the Authority's objective to ensure that the families are placed in the proper order on the waiting list and selected from the waiting list for admissions in accordance with the policies. Also so that an offer of assistance is not delayed to any family, or made to any family prematurely.

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

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

#### A. APPLICATION POOL

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

1. The application will be a permanent file.
2. All applicants in the pool will be maintained in the order of preference. Applications equal in preference will be maintained by date and time sequence.
3. All applicants must meet "Very Low Income" eligibility requirements as established by HUD. Any exceptions to these requirements, other than those outlined in Chapter two (2), "Eligibility for Admission," must have been approved previously by the HUD Field Office.
4. **Income Targeting**: At least seventy- five percent (75%) of new admissions during a PHA's fiscal year shall be targeted to extremely low income families (families at or below thirty-percent (30%) of median income. An exemption may be granted if the PHA provides an outreach and does not have enough applicants on file that are below thirty-percent (30%).
5. **Families exempt from the income targeting rule are**: certificate families converting to vouchers; continuously assisted families; and families displaced by prepayment or voluntary termination of HUD contracts

**Special Admissions**: Applicants who are admitted under Special Admissions, rather than from the waiting list, are identified by codes in the automated system and are not maintained on separate lists.

**Targeted Funding**: Applicants who are admitted under targeted funding which are not identified as a Special Admission are also identified by codes in the automated system and are not maintained on separate waiting lists.



**Determining US Residency:** If the applicant meets income requirements, the Authority determines whether the applicant also meets residency (citizenship and immigration status) requirements in accordance with HUD policy and using procedures as set forth in procedural bulletins or memoranda.

If the applicant is ineligible due to U.S. residency requirements, the applicant is notified of the determination to withdraw and of the applicant's right to an informal hearing

**B. EXCEPTIONS FOR SPECIAL ADMISSIONS**

If HUD awards the Authority program funding that is targeted for specifically named families, the Authority will admit these families under a Special Admission procedure. Special admissions families will be admitted outside of the regular waiting list process. They do not have to qualify for any preferences, nor are they required to be on the program waiting list. They are not counted in the limit on non-federal preference admissions. The Authority maintains separate records of these admissions.

*The following are examples of types of program funding that may be designated by HUD for families living in a specified unit:*

1. A family displaced because of demolition or disposition of a public or Indian housing project;
2. A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;
3. For housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990;
4. A family residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term; and
5. A non-purchasing family residing in a HOPE 1 or HOPE 2 project.
6. This includes any special rules for use of available funds when HUD provides funding to the Authority for a special purpose (e.g. desegregation) including funding for specified families or a specified category of families.
7. Families residing in developments that have been approved under the Rental Assistance Demonstration ("RAD") program.

**C. WAITING LIST PREFERENCES**

The Authority will not apply a system of preferences. Applications will be ordered by the date and time they are received by the Authority. An applicant will not be granted any preference ranking or local if any member of the family has been evicted from any federally-assisted housing.

The Authority will grant an exception to such a family if: The responsible member has successfully completed a rehabilitation program; The evicted person was not involved in

the drug related activity that occasioned the eviction; or The evicted person is no longer involved in any drug related criminal activity.

If an applicant makes a false statement in order to qualify for a ranking or a local preference, the Authority will deny admission to the program for the family.

**D. LOCAL PREFERENCES / CATEGORIES [24 CFR § 960.206]**

Local preferences will be used to select among applicants on the waiting list. The Authority uses the Residency Local Preference for families who live in the jurisdiction. A public hearing was held to adopt local preferences.

*Applicants who are entitled to a preference by Local policy include:*

- (a) Bayonne Resident who can claim at least one of the following circumstances:
  - Involuntarily displaced;
  - Currently living in substandard housing (including homeless families);
  - Currently paying more than fifty- percent (50%) of their income for rent ("Rent Burden");
  - A veteran with a discharge status other than dishonorable.
  - Disabled person(s) under mainstream
- (b) Bayonne Resident with none of the above
- (c) Non-Bayonne Resident who can claim at least one of the following circumstances
  - Involuntarily displaced;
  - Currently living in substandard housing (including homeless families);
  - Currently paying more than fifty- percent (50%) of their income for rent ("Rent Burden");
  - A veteran with a discharge status other than dishonorable.
  - Disabled person(s) under mainstream
- (d) Non-Bayonne Resident with none of the above

Descriptions of these Preferences and their "definitional elements" (or sub-categories) follow.

**Involuntary Displacement:** Applicants who have been involuntarily displaced and are not living in standard, permanent replacement housing, or will be involuntarily displaced within no more than six months from the date of verification by the Authority. Families are considered to be involuntarily displaced if they are required to vacate housing as a result of:

1. A disaster (fire, flood, earthquake, etc.) that has caused the unit to be uninhabitable;
2. Federal, state or local government action related to code enforcement, public improvement or development; or

3. Action by a housing owner which is beyond an applicant's ability to control, and which occurs despite the applicant's having met all previous conditions of occupancy, and is other than a rent increase.

For purposes of this definitional element, reasons for applicant's having to vacate a housing unit include, but are not limited to:

- Conversion of an applicant's housing unit to non-rental or non-residential use;
  - Closure of an applicant's housing unit for rehabilitation or non-residential use;
  - Notice to an applicant that she/he must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy;
  - Sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or
  - Any other legally authorized act that results, or will result, in the withdrawal by the owner of the unit or structure from the rental market.
4. Actual or threatened physical violence directed against the applicant or the applicant's family by a spouse or other household member who lives in the unit with the family. The actual or threatened violence must be of a continuing nature. An applicant who lives in a violent neighborhood or is fearful of other violence outside the household is not considered involuntarily displaced.

To qualify for this preference, the abuser must still reside in the unit from which the victim was displaced. The applicant must certify that the abuser will not reside with the applicant unless the Authority gives prior written approval.

*The Authority will consider approval for the return of the abuser to the household under the following conditions:*

- The abused has formally requested the return of the abuser;
- The Authority verifies that the abuser has received therapy or counseling that appears to minimize the likelihood of recurrence of violent behavior; or
- A counselor, therapist or other appropriate professional recommends in writing that the individual be allowed to reside with the family.

The Authority will take precautions to ensure that the new location of the family is concealed in cases of domestic abuse. If the abuser returns to the family without approval of the Authority, the Authority will deny or terminate assistance for breach of the certification.

5. To avoid reprisals because the family provided information on criminal activities to a law enforcement agency and, after a threat assessment, the law enforcement agency recommends re-housing the family to avoid or reduce risk of violence against the family. The family must be part of a Witness Protection Program, or the HUD Office or law enforcement agency must have informed the Authority that the family is part of a similar program. The Authority will take precautions to ensure that the new location of the family is concealed in cases of witness protection.

6. If a member of the family has been the victim of one or more hate crimes, and the applicant has vacated the unit because of the crime or the fear of such a crime has destroyed the applicant's peaceful enjoyment of the unit. A hate crime is actual or threatened physical violence or intimidation that is directed against a person or his property and is based on the person's race, color, religion, sex, national origin, disability or familial status, including sexual orientation, and occurred or is of a continuing nature.
7. Displacement by non-suitability of the unit when a member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit and the owner is not legally obligated to make changes to the unit. Critical elements are entry and egress of unit and building, a sleeping area, a full bathroom, a kitchen if the person with a disability must do their own food preparation/other.
8. Due to HUD disposition of a multifamily project under Section 203 of the Housing and Community Development Amendments of 1978.

**Standard Replacement Housing:** In order to receive the displacement preference, applicants who have been displaced must not be living in "standard, permanent replacement housing." Standard replacement housing is defined as housing that is decent, safe and sanitary according to Housing Quality Standards ("HQS") and local housing code/other, that is adequate for the family size according to HQS local/state/BOCA code, and that the family is occupying pursuant to a written or oral lease or occupancy agreement.

Standard replacement housing does not include transient facilities, hotels, motels, temporary shelters, and (in the case of Victims of Domestic Violence) housing occupied by the individual who engages in such violence. It does not include any individual imprisoned or detained pursuant to State Law or an Act of Congress. Shared housing with family or friends will be considered on a case-by-case basis.

**Substandard Housing:** Applicants who live in substandard housing are families whose dwelling meets one or more of the following criteria provided that the family did not cause the condition:

1. Is dilapidated, as cited by officials of a code enforcement office and does not provide safe, adequate shelter; has one or more critical defects or a combination of defects requiring considerable repair; endangers the health, safety, and well-being of family.
2. Does not have operable indoor plumbing.
3. Does not have usable flush toilet in the unit for the exclusive use of the family.
4. Does not have usable bathtub or shower in unit for exclusive family use.
5. Does not have adequate, safe electrical service.
6. Does not have an adequate, safe source of heat.
7. Should, but does not, have a kitchen. (Single Room Occupancy [SRO] Housing is not substandard solely because it does not contain sanitary and/or food preparation facilities in the unit).

8. Has been declared unfit for habitation by a government agency.
9. Is overcrowded according to local code.
10. An applicant who is a "Homeless Family" is considered to be living in substandard housing. "Homeless Families" lack a fixed, regular and adequate nighttime residence. They also may have a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations (including welfare hotels, congregate shelters and transitional housing), or an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not ordinarily used as a sleeping accommodation for human beings.

Homeless families may maintain their place on the waiting list while completing a transitional housing program. Families who are residing with friends or relatives on a temporary basis will be considered homeless.

**Rent Burden:** Families paying more than fifty percent (50%) of their income for rent for at least ninety (90) days commencing before they were selected from the Waiting List and continuing through the verification of preference will receive this preference.

For purposes of this preference, "Family Income" is "Gross Monthly Income" as defined in the regulations. "Rent" is defined as the actual amount due under a lease or occupancy agreement calculated on a monthly basis without regard to the amount actually paid.

To qualify for the Rent Burden preference, the applicant must pay rent directly to the landlord or agent. If the applicant pays their share of rent to a cohabitant and is not named on the lease, the Authority will require both verification from the Landlord that the applicant resides in the unit, and verification from the cohabitant of the amount of rent paid by the applicant.

If the applicant is subletting, the lessor must have the legal right to sublet.

If an applicant owns a mobile home, but rents the space upon which it is located, then "Rent" must include the monthly payment made to amortize the purchase price of the home.

Members of a cooperative are "renters" for the purposes of qualifying for the preference. In this case, "Rent" would mean the charges under the occupancy agreement.

**Veteran:** A person who currently serves or served in the active military, naval or air service, and who was discharged or released therefrom under conditions other than dishonorable. This includes not only the United States Army, Navy, Marine Corps, Air Force and Coast Guard, but also a member of the Reserves, Air or Army National Guard.

**Disabled Family / Member:** between 18 and 61 years of age could qualify under the Mainstream Program. See Chapter 5 for additional information.

**E. TARGETED FUNDING**

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

**F. PREFERENCE ELIGIBILITY**

**Change in Circumstances:** Changes in an applicant's circumstances while on the waiting list may affect the family's entitlement to a preference. Applicants are required to notify the Authority in writing when their circumstances change within five (5) business days of its occurrence. When an applicant claims an additional preference, she/he will be placed on the waiting list in the appropriate order determined by the newly claimed preference.

**Cross-Listing of Public Housing and Section 8:** The Authority will not merge the waiting lists for Public Housing and Section 8. However, if the Section 8 waiting list is open when the applicant is placed on the Public Housing list, the Authority must offer to place the family on both lists.

**G. ORDER OF SELECTION**

*The order of selection is based on the Authority's system for ranking preferences.*

**Local Preferences:** Local preferences will be used to select families from the waiting list. The Authority will rank all local preferences equally.

**Among Applicants with Equal Preference Status:** Among applicants with equal preference status, the waiting list will be organized by date and time.

**H. FINAL VERIFICATION OF PREFERENCES [24 CFR 5.415]**

Preference information on applications will be updated as applicants are selected from the waiting list. At that time, the Authority will mail a Preference Verification letter to the applicant's last known address requesting verification of the family's preference claim and mail third-party verifications as applicable.

**I. PREFERENCE DENIAL**

If the Authority denies a preference, the Authority will notify the applicant in writing of the reasons why the preference was denied and offer the applicant an opportunity for an informal meeting. If the preference denial is upheld as a result of the meeting, or the applicant does not request a meeting, the applicant will be placed on the waiting list without benefit of the preference. Applicants may appeal to the Board of Commissioners if not satisfied with the Authority's determination.

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

**J. REMOVAL FROM WAITING LIST AND PURGING**

If a letter is returned by the Post Office without a forwarding address, the applicant will be removed without further notice, and the envelope and letter will be maintained in the file. If a letter is returned with a forwarding address, it will be re-mailed to the address indicated.

If a family is removed from the waiting list for failure to respond, the BHA may reinstate the family if it is determined that the lack of response was due to BHA error, or to circumstances beyond the family's control, as a result of a family member's disability, or as a direct result of status as a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, including an adverse factor resulting from such abuse.

The waiting list will be purged at management's discretion by mailing a letter to all applicants to ensure that the waiting list is current and accurate. The verified mailing will ask for current information and confirmation of continued interest.

The same guidelines will be used for failure to respond to the mailing. Notices will be made available in accessible format upon the request of a person with a disability. Applicants are required to contact the Authority in writing to confirm their continued interest.

## Chapter 5

### MAINSTREAM VOUCHERS

#### INTRODUCTION

The Mainstream Voucher Program provides voucher assistance to non-elderly persons with disabilities. Aside from separate funding and serving a specific population, Mainstream vouchers are administered the same as regular voucher assistance and are regulated under the same program requirements as the HCV Program, under 24 CFR Part 982. There is no special authority to treat families that receive a Mainstream Voucher differently from other applicants and participants of the HCV Program. For example, the Authority cannot apply different payment standards, establish conditions for allowing portability, or screening criteria for Mainstream Voucher families from regular HCV families.

- A. **Initial Lease Term:** Under the HCV program, voucher participants must enter into an initial lease term with the owner for one year, unless the Authority determines that a shorter term would improve housing opportunities for the tenant and the shorter term is a prevailing market practice. The Bayonne Housing Authority requires an initial lease term of one year.
- B. **Criminal Background Screening:** The Authority is required to, and will continue to, apply the same criminal background screening process to all HCV participants in compliance with HUD regulations and applicable New Jersey state laws.
- C. **Mainstream Age Eligibility to Enter HAP Contract Statutory Authority:** The statute (42 U.S.C. 8013(k) (2)) provides that the eligible member of a Mainstream household must be non-elderly, defined as at least 18 years of age and under 62 years of age (not reached their 62<sup>nd</sup> birthday) to be eligible to be placed under HAP contract.
- D. **Aging Out of Mainstream Eligibility:** Once eligible, existing families receiving Mainstream vouchers, where the eligible family member is now age 62 or older, will NOT age out of the Mainstream Voucher Program as long as the family member was eligible on the day the Mainstream voucher was first issued and a HAP contract was executed.
- E. **Reissuance of Mainstream Vouchers:** At turnover, all Mainstream turnover vouchers must be reissued to the next Mainstream-eligible family on the HCV waiting list in accordance with Authority preferences. Turnover occurs when a family receiving Mainstream voucher assistance leaves the program. Mainstream-eligible families are those that include at least one non-elderly (at least age 18 and not yet 62 years of age) person with disabilities. If a Mainstream turnover voucher becomes available, the Authority must determine if the families at the top of the HCV waiting list qualify.
- F. **One Waiting List Requirement:** Per 24 CFR 982.204(f), the Authority must maintain one (1) Waiting list for all tenant-based assistance, which includes Mainstream voucher assistance. The Authority shall not have a separate waiting list for Mainstream voucher assistance. When issuing a Mainstream Voucher, the Authority will choose the first Mainstream-eligible family from the HCV waiting list, in accordance with the Authority's



policies governing waiting list preferences.

- G. Admissions Preference: [Notice PIH 2020-01 (5) (G,H)]** An admissions preference affects the order applicants appear on the waiting list. Preferences apply to all vouchers on the waiting list, not only Mainstream Vouchers. Adopting an admissions preference does not necessarily mean that every person that receives assistance will meet the preference criteria. Applications are ordered by the date and time they are received by the Authority. Local preferences are used to select among applicants on the waiting list and the Authority uses the Residency Local Preference for families who live in the jurisdiction.

Local preferences are:

- Involuntary Displacement
- Substandard Housing
- Rent Burden
- Veteran Status
- Disabled Member between the ages of 18 to 61 yrs. old.

- H. Portability:** If a Mainstream Voucher participant ports to another Public Housing Authority (BHA) and the receiving BHA chooses to bill the BHA, then the voucher will remain a BHA Mainstream Voucher.

If the receiving BHA has a Mainstream Program and they have an available Mainstream Voucher, then they can absorb the voucher and the BHA voucher will be freed up to lease up another BHA Mainstream-eligible family. If the receiving BHA doesn't have a Mainstream Program and chooses to absorb the voucher then it becomes a regular voucher for the receiving BHA and frees up a BHA Mainstream Voucher.

The Authority works with landlords to encourage participation in the Mainstream Program and assist persons with disabilities to secure and maintain suitable housing in the community.

**The Authority must maintain a utilization rate of at least eighty percent (80%) for Mainstream Vouchers and comply with program requirements or funding may be recapture.**

## Chapter 6

### SUBSIDY STANDARDS

#### INTRODUCTION

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

#### A. DETERMINING VOUCHER SIZE

The Authority does not determine who shares a bedroom/sleeping room, but there must be at least one person per bedroom on the Voucher. The Authority's subsidy standards for determining voucher size shall be applied in a manner consistent with Fair Housing guidelines. For subsidy standards, an adult is a person eighteen (18) years or older.

All standards in this section relate to the number of bedrooms on the Voucher, not the family's actual living arrangements. The unit size on the Voucher remains the same as long as the family composition remains the same, regardless of the actual unit size rented.

1. Generally, the Authority assigns one bedroom to two (2) people within the following guidelines:
  - Persons of different generations, persons of the opposite sex (other than spouses), and unrelated adults should be allocated a separate bedroom.
  - Separate bedrooms should be allocated for persons of the opposite sex (other than adults who have a spousal relationship). Young children of the opposite sex (up to, and including 6 years of age) may share a bedroom with a parent.
  - Foster children will be included in determining unit size only if they will be in the unit for more than six (6) months.
  - Live-in aide/attendants will generally be provided a separate bedroom. No additional bedrooms are provided for the live-in aide's family.
  - Space may be provided for a child who is a full time student and away at school but who lives with the family during school recesses with the appropriate supporting documentation.
  - Space will not be provided for a family member who will be absent most of the time, such as a member who is away in the military.
  - Adults of different generations will have separate bedrooms.
  - Single person families shall be allocated an efficiency unit or one bedroom.

- A Family that consists of only a pregnant woman must be treated as a two (2) person family.

## **B. EXCEPTIONS TO SUBSIDY STANDARDS**

**Changes In Household Composition:** The Voucher size is determined prior to the briefing by comparing the family composition to the Authority's subsidy standards. If an applicant requires a change in the Voucher size, the following guidelines will apply.

It is the participant family's obligation to inform the Authority of the birth, adoption or court- awarded custody of a child, except when the family has custody of a minor, and to request the Authority's approval to add any other family member as an occupant of the unit. The family must document custody to be allowed to add minors to the household. The family must request prior approval of additional household members in writing. The Authority may deny requests to add household members who would cause the family to be overcrowded and require a larger unit size. When adding an adult member (who otherwise would not be eligible), the Head of Household will be required to sign a stipulation requesting an additional room for the added member.

If the family does not obtain prior written approval from the Authority, any person the family has permitted to stay or move in will be considered an unauthorized household member. Likewise, if a family member leaves the household, the family must report this change to the Authority and the owner, in writing, within 30 days of the change and certify as to whether the person is temporarily or permanently absent. An adult member who has been removed from the household may not be added back into the household.

In addition, the lease may require the family to obtain prior written approval from the owner when there are changes in family composition other than birth, adoption, or court-awarded custody

**Exception to Subsidy Standards:** The Authority will grant an exception upon request as a reasonable accommodation for persons with disabilities. Circumstances may dictate a larger size than the subsidy standards permit when persons cannot share a bedroom because of a need, such as a verified medical or health reason.

A family may request a larger sized or Voucher than indicated by the Authority's subsidy standards. Such request must be made in writing within ten (10) working days of the Authority's determination of bedroom size. The request must explain the need or justification for a larger bedroom size. Requests based on health related reasons must be verified by a medical professional.

If the Authority makes an error in the bedroom size designation, the family will be issued a Voucher of the appropriate size so that the family is not penalized.

**Underhoused and Overhoused Families:** If a unit does not meet HQS space standards due to an increase in family size, (unit too small), the Authority will issue a new voucher and assist the family in locating a suitable unit. The Authority will also notify the family of the circumstances under which an exception will be granted, such as:

- If a family with a disability is under housed in an accessible unit.
- If a family requires the additional bedroom because of a health problem which has been verified by the Authority.
- The Authority and family have been unable to locate a unit within sixty (60) days.

**C. UNIT SIZE SELECTED**

The family may select a different size dwelling than that listed on the Voucher. The criteria to consider is as follows:

2. **Subsidy Limitation:** the Authority will apply the Payment Standard for the bedroom size shown on the Voucher or the size of the actual unit selected by the family, whichever is less.
3. **Utility Allowance:** The utility allowance used to calculate the gross rent is based on the actual size of the unit the family selects, regardless of the size authorized on the family's Voucher.

Generally, HQS allows two persons per bedroom or sleeping room and permits maximum occupancy levels shown below. The standard allowable living space (other than kitchen and bathroom) to be utilized as sleeping room, provided it meets minimum footage, lighting, and other requirements as per state and local codes, whichever is more stringent.

**HQS GUIDELINES FOR UNIT SIZE SELECTED**

<i>Voucher size</i>	<i>Persons in Household (Minimum#)</i>	<i>Persons in Household (Maximum #)</i>
<b><i>0 Bedroom</i></b>	<b><i>1</i></b>	<b><i>1</i></b>
<b><i>1 Bedroom</i></b>	<b><i>1</i></b>	<b><i>2</i></b>
<b><i>2 Bedroom</i></b>	<b><i>2</i></b>	<b><i>4</i></b>
<b><i>3 Bedroom</i></b>	<b><i>3</i></b>	<b><i>6</i></b>
<b><i>4 Bedroom</i></b>	<b><i>4</i></b>	<b><i>8</i></b>

## Chapter 7

### **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 the BHA's subsidy. The BHA 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 BHA policies related to these topics in four parts as follows:

**Part I: Annual Income.** HUD regulations specify the sources of income which are excluded from the family's annual income. These requirements and BHA policies for calculating annual income are found in Part I.

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

**Part III: Adjusted Income.** Once annual income has been established, HUD regulations require the BHA to subtract from annual income any of five mandatory deductions for which a family qualifies and allow the BHA to adopt additional permissive deductions. These requirements and BHA policies for calculating adjusted income are found in Part III.

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

#### **PART I: ANNUAL INCOME**

##### **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 7-1)
- Treatment of Family Assets (Exhibit 7-2)
- The Effect of Welfare Benefit Reduction (Exhibit 7-3)

Sections 7 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 8.

**B. HOUSEHOLD COMPOSITION AND INCOME**

**Overview**

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition in accordance with HUD regulations and BHA policies in Chapter 7. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster child or foster adult	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included [24 CFR 5.609(a)].
Minors	Earned income of children under 18 years of age is excluded [24 CFR 5.609(b)(3)].

	All 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)(14)]. 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.

BHA Policy

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

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

*Absent Students*

BHA Policy

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

*Absences Due to Placement in Foster Care*

Children temporarily absent from the home as a result of placement in foster care (as confirmed by the state child welfare agency) are considered members of the family [24 CFR 5.403].

BHA Policy

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

## ***Absent Head, Spouse, or Cohead***

### **BHA Policy**

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

## **Family Members 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].

## **Absence due to Medical Reasons**

### **BHA Policy**

If any family member leaves the household to enter a facility such as hospital, nursing home, or rehabilitation center, the Authority will seek advice from a reliable qualified source as to the likelihood and timing of their return. If the verification indicates that the family member will be permanently confined to a nursing home or other facility, the family member will be considered permanently absent. If the verification indicates that the family member will return in less than sixty (60) consecutive days, the family member will not be considered permanently absent.

If the person who is determined to be permanently absent is the sole member of the household, assistance will be terminated in accordance with the Authority's "Absence of Entire Family" policy referenced below.

## **Joint Custody of Dependents**

### **BHA Policy**

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

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



## Caretakers for a Child

### BHA Policy

The approval of a caretaker is at the owner and BHA's discretion and subject to the owner and BHA's screening criteria. If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the BHA will take the following actions.

- (1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.
- (2) If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases the BHA will extend the caretaker's status as an eligible visitor.
- (3) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.
- (4) 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.

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

Families are required both to notify the Authority and the owner before they move out of a unit and to give the Authority information about any family absence from the unit. If it is determined that the family is absent from the unit, the Authority will continue assistance payments for a maximum of thirty (30) days. Families must notify the Authority and the owner if they are going to be absent from the unit for more than thirty (30) consecutive days.

HUD regulations require the Authority to terminate assistance if the entire family is absent from the unit for a period of more than sixty (60) consecutive calendar days. "Absence" means that no family member is residing in the unit. In order to determine if the family is absent from the unit, the Authority may, but is not limited to:

- Write letters to the family at the unit;
- Telephone the family at the unit;
- Interview neighbors;
- Verify if utilities are in service; and/or

- Perform special inspections

A person with a disability may request an extension of time as an accommodation, provided that the extension does not go beyond the HUD-allowed one hundred eighty (180) consecutive calendar days limit. If required, the Authority may reinstate the family to the Program if the following applies:

- The absence which resulted in termination of assistance was due to a person's disability.
- The Authority can verify that the person was unable to notify the Authority in accordance with the family's responsibilities.
- Funding is available.

**Absence of Any Individual Member:** Any member of the household will be considered permanently absent if she/he is away from the unit for two (2) consecutive months except as otherwise provided in this Chapter.

**Absence due to Incarceration:** If the sole member of the household is incarcerated for more than sixty (60) consecutive days, she/he will be considered permanently absent. Any member of the household, other than the sole member, will be considered permanently absent if they are incarcerated for sixty (60) days. The Authority will determine if the reason for incarceration is for drug-related or violent criminal activity and pursue appropriate action.

**Absence of Adult:** If neither parent remains in the household and the appropriate agency has determined that another adult is to be brought into the assisted unit to care for the children for an indefinite period, the Authority will treat that adult as a visitor for the first thirty (30) days. If, by the end of that period, court-awarded custody or legal guardianship has been awarded to the caretaker, the Voucher will be transferred to the caretaker.

If the appropriate agency cannot confirm the guardianship status of the caretaker, the Authority will review the status at thirty (30) days intervals. If custody or legal guardianship has not been awarded by the court but the action is in process, the Authority will secure verification from social services staff or the attorney as to the status. The Authority will transfer the Voucher to the caretaker, in the absence of a court order, if the caretaker has been in the unit for more than thirty (30) days and it is reasonable to expect that permanent custody will be granted.

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

When a final disposition of custody is determined, the income of the caretaker will also be counted as family income for purposes of determining TTP.

If a member of the household is subject to a court order that restricts him/her from the home for more than sixty (60) days, the person will be considered permanently absent. If an

adult family member leaves the household for any reason, the family must report the change in family composition to the Authority within ten (10) working days. **The family must provide two (2) types of verification of new address** such as PSE&G bill, telephone bill, driver's license; or a new lease.

The family is required to notify the Authority in writing (Certified Return Receipt) within ten (10) working days when an adult family member moves out. The notice must contain a certification by the family as to whether the adult is temporarily or permanently absent. The family member will be determined permanently absent if verification is provided. Time extension will be granted as an accommodation upon request by a person with a disability.

If an adult child goes into the military and leaves the household, they will be considered permanently absent. Full-time students who attend school away from the home and live with the family during school recess will be considered permanently absent from the household.

**Reporting Additions to Owner and the Authority:** The family obligations require the family to request the Authority's approval to add any other family member as an occupant of the unit and to inform the Authority of the birth, adoption or court-awarded permanent custody of a child. The family must request prior approval of additional household members in writing. In addition, the person requesting to be added to the leaseholder's household, must undergo a criminal background check, sign a Release of Information form, credit check, as well as providing all required information as well. If the family does not obtain prior written approval from the Authority, any person the family has permitted to move in will be considered an unauthorized household member. An interim reexamination will be conducted for any additions to the household.

In addition, the lease may require the family to obtain prior written approval from the owner when there are changes in family composition. If the addition to the household requires a separate bedroom, which in turn causes over-utilization of unit, the family will be issued a new Voucher, changing voucher size be required to relocate to an appropriate sized unit.

**Reporting Absences to the Authority:** Reporting changes in household composition is both a HUD and an Authority requirement. If a family member leaves the household, the family must report this change to the Authority, in writing, within ten (10) working days of the change and certify as to whether the member is temporarily absent or permanently absent. The written notice must state the exact amount of time the family member will be absent. The Authority must also be informed in writing if the unit will be vacant for thirty (30) or more days. The Authority will conduct an interim evaluation for changes, which affect the TTP in accordance with the interim policy.

### **AVERAGING INCOME**

*When Annual Income cannot be anticipated for a full twelve (12) months, the Authority may:*

1. Average known sources of income that vary to compute an annual income, *or*;

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

Income from the previous year may be analyzed to determine the amount to anticipate when third party or check-stub verification is not available. If by averaging, an estimate can be made for those families whose income fluctuates from month to month, this estimate will be used so that the housing payment will not change from month to month. The method used depends on the regularity, source and type of income.

### **MINIMUM INCOME**

There is no minimum income requirement. Families who report zero income are required to complete a written certification. The Authority can request a justification as to how the family is paying for daily and routine needs. Families are required to pay a minimum TTP (rent and utilities) of \$50 a month. The Authority may grant an Exception to the Minimum Rent requirement as detailed in Section “D” above.

### **INCOME OF PERSON PERMANENTLY CONFINED TO NURSING HOME**

If a family member is permanently confined to a hospital or nursing home and there is a family member left, the Authority will re-calculate the TTP by excluding the income of the person permanently confined to the nursing home or other facility and remove the deductions for medical expenses of that family member.

The Authority will request verification from a responsible medical professional to determine whether the family member is temporarily or permanently out of the household. 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.

The income and deductions of the absent member is included in the TTP calculation if his/her income goes to a family member.

### **MAXIMUM INITIAL RENT” BURDEN**

A family must not pay more than forty percent (40%) of adjusted income for rent when the family first receives Section 8 tenant based assistance for occupancy of a particular unit. This requirement only applies for a family that initially receives tenant-based assistance for occupancy of a unit after the merger date of October 1, 1999. However, the maximum initial rent burden requirement is not applicable if the family stays in the same unit where the family initially received assistance for occupancy of the unit prior to the merger of October 1, 1999.

The maximum initial rent burden requirement is applicable each time a participant moves to a new unit. (Section 8(o)(3) of the U.S.H. Act, 42 U.S.C. 1437 f(3); 24 CFR 982.508)

## **“MINIMUM RENT” AND MINIMUM FAMILY CONTRIBUTION**

Minimum rent includes the combined amount (TTP) a family pays towards rent and/or utilities. Minimum family contribution in the HCV Program is fifty dollars (\$50.00).

### **HARDSHIP EXCEPTION TO \$50.00 MINIMUM RENTS**

A tenant under the HCV Program may be eligible to have their minimum rent reduced to “zero”. The Authority shall grant an exception to the minimum rent requirements if the tenant can demonstrate a hardship circumstance expected to be of a long-term basis (over ninety (90) days) as follows:

- Family has lost eligibility or is awaiting determinations for a federal, state or local assistance program.
- The Family income decreased because of a change in circumstances including the loss of employment.
- A death in the family occurred which affected their ability to pay their rent.
- Family would be evicted as a result of imposing the minimum rent requirement.
- Family is unable to pay the minimum rent.
- Family experiences other circumstances as determined by the Authority.

It is the tenant’s responsibility to provide written documentation, dates and/or names and telephone numbers of persons who may verify information, and any other information that may assist the Authority in making a decision. The request for a hardship exemption must be 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. All decisions made by the Authority in regard to minimum rent decisions are subject to an informal hearing which the tenant would request in writing to the Authority.

When a family requests a financial hardship exemption, the Authority will suspend the minimum rent requirement and adjust the HAP payment effective the beginning of the month following the family’s hardship request until the Authority determines whether there is a qualifying hardship and whether such hardship is temporary or permanent. “Suspension” means that the Authority must not charge the family a minimum rent or, if applicable, discontinue charging the family a minimum rent.

**If the Authority determines that the qualifying financial hardship is temporary**, a minimum rent will be suspended for a period of ninety (90) days beginning the first of the

month following the date of the family’s request for a hardship exemption. At the end of the ninety (90) day suspension period, a minimum rent will be imposed retroactively to the time of suspension. A reasonable repayment agreement shall be offered for any minimum rent back- payment by the family.

**If the Authority determines that the financial hardship is of a long-term duration**, the Authority will exempt (retroactively to the beginning of the month following the date of the family’s request for a minimum rent exemption) the family from the payment of the minimum rent until the hardship no longer exists.

The Authority will not grant an interim rent adjustment if the loss of income will be less than three (3) weeks.

### **C. CALCULATING ANNUAL INCOME**

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

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

At initial occupancy and for an interim reexamination of family income, the BHA 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 8.

#### **BHA Policy**

When the BHA cannot readily anticipate income based upon current circumstances (e.g., in the case of temporary, sporadic, or variable employment, seasonal employment, unstable working hours, or suspected fraud), the BHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

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

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

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

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

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

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the BHA will calculate annual income using current circumstances and then, should the change in income require the BHA to conduct an interim reexamination, conduct an interim reexamination in accordance with BHA policy in Chapter 13.

### **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 BHA policies in Chapter 13 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 13.

#### **D. EARNED INCOME**

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

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

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

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

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

## BHA Policy

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

For persons who regularly receive bonuses or commissions, the BHA will verify and then average amounts received for the two years preceding admission or interim reexamination. If only a one-year history is available, the BHA will use the prior year amounts. In either case the family may provide, and the BHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the BHA 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].

## **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 BHA policies below will no longer be applicable as of that date or when the last qualifying family exhausts their exclusion period, whichever is sooner.

## **Calculation of the Disallowance**

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

## **Calculation Method**

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

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

#### BHA Policy

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

### ***Second 12-Month Exclusion***

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

#### BHA Policy

During the second 12-month exclusion period, the BHA will exclude 50 percent of any increase in income attributable to new employment or increased earnings.

### ***Lifetime Limitation***

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24-month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance. The EID will sunset on January 1, 2026. In no circumstances will a family member's exclusion period continue past January 1, 2026.

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

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

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

BHA Policy

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

BHA Policy

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

## **Capital Indebtedness**

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

### BHA Policy

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

## **Negative Business Income**

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

## **Withdrawal of Cash or Assets from a Business**

HUD regulations require the BHA 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.

### BHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of \$2,000 to help a business get started, the BHA 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**

### BHA 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].

**E. 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 BHA 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 BHA 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 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 3II.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 BHA.

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.

### BHA Policy

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

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

#### **Example 1**

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

When a student receives assistance from both Title IV of the HEA and from other sources, the BHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The assistance received under Title IV of the HEA will be applied to the student's actual covered costs first and then the other student financial assistance will be applied to any remaining actual covered costs.

If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the assistance included under other student financial assistance" would be excluded from income.

#### **Example 2**

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



If the amount of assistance excluded under Title IV of the HEA is less than the actual covered costs, the BHA 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).

## **F. 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. Regulations do not specify which types of periodic payments are included in annual income.

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

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

#### BHA Policy

The BHA 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.

#### BHA Policy

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

When a delayed-start payment is received that is to be included and the family reports this during the period in which the BHA is processing an annual reexamination, the BHA will adjust the family's rent retroactively for the period the payment was intended to cover.

If the delayed-start payment is received outside of the time the BHA is processing an annual reexamination, then the BHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, the BHA will conduct an interim in accordance with BHA policies in Chapter 13. If not, the BHA will consider the amount when processing the family's next annual recertification.

#### **Retirement Accounts [24 CFR 5.609(b)(26); Notice PIH 2023-27]**

Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals is not considered actual income from assets.

However, any distribution of periodic payments from such accounts is included in annual income at the time they are received by the family.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value.

### **Social Security Benefits [Notice PIH 2018-24]**

The BHA is required to use the gross benefit amount to calculate annual income from Social Security benefits.

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal Social Security and SSI benefits are adjusted to reflect the increase, if any, in the cost of living. The federal COLA does not apply to state-paid disability benefits. Effective the day after the SSA has announced the COLA, PHAs are required to factor in the COLA when determining Social Security and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year [Notice PIH 2023-27]. When a family member's benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other debts, the BHA must use the gross amount of the income, prior to the reduction, to determine a family's annual income.

### **BHA Policy**

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. When the SSA overpays an individual, resulting in a withholding or deduction from their benefit amount until the overpayment is paid in full, the BHA will use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

### **Alimony and Child Support**

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

### **BHA Policy**

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

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

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

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

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

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

If the BHA determines that it is likely that the family will receive a similar payment and can appropriately verify it, the amount will be included when projecting annual income. If no payments have been made in the past three months and there are no lump sums, the BHA will not include alimony or child support in annual income.

**G. 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 BHA may accept a self-certification from the family stating that the income will not be repeated in the coming year. See Chapter 8 for BHA 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. However, the value of regular in kind donations from family and friends is included
- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii)].

## **H. WELFARE ASSISTANCE**

### **Overview**

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

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

The BHA 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 7-3. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

### ***Covered Families***

The families covered by 24 CFR 5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of

the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

### ***Imputed Income***

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, the BHA must include in annual income “imputed” welfare income. The BHA must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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

### ***Offsets***

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

## **I. 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.

**J. 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 BHA or owner chooses not to conduct the examination.

**K. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME [24 CFR 5.609(b)]**

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

- Payments received for the care of foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(b)(4)].
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR 5.609(b)(5)]. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income [Notice PIH 2023-27].
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6)].

- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7)].
- Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10)].
- Income earned by government contributions to, and distributions from, “baby bond” accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10)].
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17)]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20)]. The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [Notice PIH 2023-27].
- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members in excess of the first \$2,000 of per capita shares are included in a family’s annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income in HUD programs that adopt the definitions of *annual income* in 24 CFR 5.609, the Census Long Form, and the IRS Form 1040, including the programs affected by Notice PIH 2023-27.
- Replacement housing “gap” payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing “gap” payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing “gap” payments [24 CFR 5.609(b)(23)].



- Income earned on amounts placed in a family’s Family Self-Sufficiency account [24 CFR 5.609(b)(27)].
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred e.g., special equipment, clothing, transportation, child care, etc.) -and which are made solely to allow participation in a specific program [24 CFR 5.609(ei)(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 BHA 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)].

### BHA Policy

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

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

In calculating the incremental difference, the BHA will use as the pre-enrollment income the total annualized amount of the family member’s welfare assistance and earnings reported on the family’s most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the BHA's interim reporting requirements (see Chapter 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 [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.

HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the *Federal Register* on May 20, 2014. It includes:

- a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
- b. Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
- (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
- (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
- (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
- (g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
- (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
- (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)

- (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
- (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
- (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
- (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
- (n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
- (q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (r) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (t) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249) (See Section 6 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**

### **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 7-2 provides the regulatory definition of *net family assets*.

Optional policies for family self-certification of assets are found in Chapter 8. Policies related to the asset limitation may be found in Chapter 16.

Income from assets is always anticipated, irrespective of the income examination type.

#### **BHA Policy**

The BHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. The BHA will use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected, (2) it is not feasible to anticipate a level of income over 12 months, or (3) the BHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income, but the property

is currently vacant, the BHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

Any time current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to the BHA to show why the asset income determination does not represent the family's anticipated asset income.

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

**BHA Policy**

The BHA 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 \$5,000.

***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.

**BHA 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***

#### **BHA Policy**

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. The BHA may verify the value of the assets disposed of if other information available to the BHA does not appear to agree with the information reported by the family.

## **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 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, 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 BHA 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.

**BHA Policy**

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

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

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

***Necessary and Non-Necessary Personal Property [24 CFR 5.603(b)(3)(i)]***

All assets are categorized as either *real property* (e.g., land, a home) or *personal property*.

*Personal property* includes tangible items, like boats, as well as intangible items, like bank accounts.

The value of necessary items of personal property is excluded from the calculation of net family assets. Necessary items of personal property include a car used for commuting or medical devices.

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

The combined value of all **non-necessary** items of personal property is only included in annual income when the combined total value exceeds \$50,000 (adjusted annually 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
<p>Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter)</p> <p>Furniture, carpets, linens, kitchenware</p> <p>Common appliances</p> <p>Common electronics (e.g., radio, television, DVD player, gaming system)</p> <p>Clothing</p> <p>Personal effects that are not luxury items (e.g., toys, books)</p> <p>Wedding and engagement rings</p> <p>Jewelry used in religious/cultural celebrations and ceremonies</p> <p>Religious and cultural items</p> <p>Medical equipment and supplies</p> <p>Health care–related supplies</p> <p>Musical instruments used by the family</p> <p>Personal computers, phones, tablets, and related equipment</p> <p>Professional tools of trade of the family, for example professional books</p> <p>Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities</p> <p>Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)</p>	<p>Recreational car/vehicle not needed for day-to-day transportation for personal or business use (campers, motorhomes, traveling trailers, all-terrain vehicles (ATVs))</p> <p>Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds)</p> <p>Recreational boat/watercraft</p> <p>Expensive jewelry without religious or cultural value, or which does not hold family significance</p> <p>Collectibles (e.g., coins/stamps)</p> <p>Equipment/machinery that is not used to generate income for a business</p> <p>Items such as gems/precious metals, antique cars, artwork, etc.</p>

BHA Policy

In determining the value of non-necessary personal property, the BHA will use the family’s estimate of the value. The BHA 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 BHA 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 13. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months of family's income certification period and the BHA 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 in this chapter.

**BHA Policy**

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

**Jointly Owned Assets [Notice PIH 2023-27]**

For assets owned jointly by the family and one or more individuals outside of the assisted family, the BHA 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 BHA 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 BHA 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 BHA 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].

#### **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.

#### **BHA Policy**

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions such as settlement costs and transfer taxes [New PH OCC GB, Income Determinations, p. 24].

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

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

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

### **Actual Income from Assets**

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

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

The BHA 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 8 of this policy.

### **BHA Policy**

The BHA will not be using a self-certification under this rule.

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

### **Imputed Income from Assets**

When net family assets exceed \$50,000 (adjusted annually by HUD), the BHA may not rely on self-certification. If actual returns can be calculated, the BHA 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 BHA 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 BHA can compute actual income from some but not all assets, the BHA 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.

### *Asset Calculation*

#### **BHA Policy**

The Authority will use current circumstances to determine the value of an asset and the anticipated income from the asset. Acceptable methods of verification include, in this order:

**Checking and Savings Accounts:** For regular checking accounts and savings accounts, *cash value*

has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero. In determining the value of a checking account, the Authority will use the average monthly balance for the last three months. In determining the value of a savings account, the Authority will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, the Authority will multiply the value of the account by the current rate of interest paid.

- Account statements, passbooks, certificates of deposit, or The Authority verification forms completed by the financial institution.
- Broker's statements showing value of stocks or bonds and the earnings credited the family. Earnings can be obtained from current newspaper quotations or oral broker's verification.
- IRS Form 1099 from the financial institution, provided that the Authority must adjust the information to project earnings expected for the next twelve (12) months.

**Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds:** Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash. In determining the market value



of an investment account, the Authority will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), the Authority will calculate asset income based on the earnings for the most recent reporting period.

**Interest Income from Mortgages or Other Capital Investments:** The Authority will use:

- A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for next twelve (12) months. (A copy of the check paid by the buyer to the family is not sufficient unless a breakdown of interest and principal is shown.)
- Amortization schedule showing interest for the twelve (12) months following the effective date of the initial certification or annual re-certification.

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25].

In determining the equity, the Authority will use the assessed market value used to determine local tax purposes. The Authority will obtain market value by reviewing the local assessment roll of the owner's most recent property tax liability bill. The Authority will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, the Authority will use the basic loan balance information to deduct from the market value in the equity calculation.

Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b), Notice PIH 2012-3]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

The Authority must also deduct from the equity the reasonable costs for converting the asset to cash. Using the formula for calculating equity specified above, the net cash value of real property is the market value of the loan (mortgage) minus the expenses to convert to cash [Notice PIH 2012-3].

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless the Authority determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

**Net Rental Income from Property Owned by Family:** Verification includes the review of:

- IRS Form 1040 with Schedule E (Rental Income).
- Copies of latest rent receipts, leases, or other documentation of rent amounts.
- Documentation of allowable operating expenses of the property: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.
- Lessee's written statement verifying rent payments to the family and family's self-certification as to net income realized.

### **PART III: ADJUSTED INCOME**

#### **A. INTRODUCTION**

##### **Overview**

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

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

(a) *Mandatory deductions*

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

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

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

(i) Unreimbursed health and medical care expenses of any elderly family or disabled family;

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

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

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 8.

### **Anticipating Expenses**

#### **BHA Policy**

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

When calculating health and medical care expenses, the BHA 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 BHA will use information for the previous 12-month period.

### **B. DEPENDENT DEDUCTION**

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

**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].

**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 ten percent of annual income.

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

**Definition of *Medical Expenses***

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

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

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

BHA Policy

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

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

**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.

**BHA Policy**

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the BHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When the BHA determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members’ incomes.

***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.

#### **BHA Policy**

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

If the care attendant also provides other services to the family, the BHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

#### ***Payments to Family Members***

No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

#### **Necessary and Reasonable Expenses**

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

#### **BHA Policy**

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

## BHA Policy

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

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

### **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. However, child care expenses for foster children that are living in the assisted family’s household are included when determining the family’s childcare expenses [HCV GB, p. 5-29].

#### **Qualifying for the Deduction**

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

## BHA 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 childcare deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family’s request, the BHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

## ***Seeking Work***

### **BHA Policy**

If the childcare expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the child care expense being allowed by the BHA.

## ***Furthering Education***

### **BHA Policy**

If the childcare expense being claimed is to enable a family member to further their education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

## ***Being Gainfully Employed***

### **BHA Policy**

If the childcare 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 childcare – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

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

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



The BHA 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].

### BHA Policy

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

### **Eligible Child Care Expenses**

The type of care to be provided is determined by the assisted family. The BHA may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care.

### *Allowable Child Care Activities*

### BHA Policy

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

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

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

## **G. HARDSHIP EXEMPTIONS [24 CFR 5.611(c), (d), and (e)]Health and Medical Care and Disability Assistance Expenses [24 CFR 5.611(c); Notice PIH 2023-27]**

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

reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed.

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

### **Phased-In Relief**

The first category is applicable to all families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review. The family must receive phased-in relief if they are determined to be eligible. 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 BHA 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 BHA. 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 BHA 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 BHA. When a family moves

with continued assistance or ports to a new BHA, the family must continue to receive the phased-in relief. The family must receive the remaining calendar months of the percentage phase-in. The BHA must use the existing phase-in documentation to determine the remaining calendar months and the percentage phase-in.

### BHA Policy

The BHA 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 BHA policy) that would not otherwise trigger an interim reexamination.

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

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

The BHA 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.

### BHA 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. The BHA 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 BHA policies.

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

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

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

Other circumstances as determined by the BHA.

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

The BHA 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)].

### BHA Policy

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

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

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

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

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, the BHA 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.

BHA has established 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.

### BHA Policy

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

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

A family whose eligibility for the child care expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to the BHA's satisfaction that the family is unable to pay their rent because of the loss of the child care expense deduction, and that the child care expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, the BHA must recalculate the family's adjusted income and continue the child care deduction.

The BHA has developed a policy to define what constitutes a hardship, which includes the family's inability to pay rent. The BHA 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.

### BHA Policy

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

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

The family must also demonstrate that the child care expense is still necessary even though the family member is no longer employed or furthering their education. The

BHA will consider qualification under this criterion on a case-by case basis (for example, if the family member who was employed has left their job in order to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town).

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

The BHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions.

If the BHA denies the request, the notice must specifically state the reason for the denial. PHAs must provide families 30 days' notice of any increase in rent.

If the BHA approves the request, the notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)]. The notice must also state the requirement for the family to report to the BHA 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].

### BHA Policy

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

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

If the family qualifies for an exemption, the BHA will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.

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

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

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

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

### BHA Policy

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

## **H. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)(ii)]**

### BHA Policy

The BHA has opted not to use permissive deductions.

## **PART IV: CALCULATING FAMILY SHARE AND BHA SUBSIDY**

### **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 of \$50 is established by the BHA

The BHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-IV.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.

***Welfare Rent [24 CFR 5.628]***

BHA Policy

Welfare rent does not apply in this locality.

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

BHA Policy

The minimum rent for this locality is \$50.

***Family Share [24 CFR 982.305(a)(5)]***

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the BHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the BHA 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 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section in this chapter.)

***BHA Subsidy [24 CFR 982.505(b)]***

The BHA 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 in this chapter.)

***Utility Reimbursement [24 CFR 982.514(b); 982.514(c)]***

When the BHA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits the BHA to pay the reimbursement to the family or directly to the utility provider.

BHA Policy

The BHA will make utility reimbursements to the family.



## Overview

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the BHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

## HUD-Defined Financial Hardship

Financial hardship includes the following situations:

- (1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

### BHA 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.

### BHA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities.

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.

- (4) A death has occurred in the family.

### BHA Policy

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

- (5) The family has experienced other circumstances determined by the BHA.

### BHA Policy

The BHA has not established any additional hardship criteria.

**Implementation of Hardship Exemption**

***Determination of Hardship***

BHA Policy

The BHA defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

<b>Example: Impact of Minimum Rent Exemption</b>	
<b>Family Share – No Hardship</b>	<b>Family Share – With Hardship</b>
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$50 Minimum rent	\$50 Minimum rent
Minimum rent applies. TTP = \$50	Hardship exemption granted. TTP = \$15

BHA Policy

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family’s ability to pay the minimum rent.

The BHA will make the determination of hardship within 30 calendar days.

***No Financial Hardship***

BHA Policy

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

***Temporary Hardship***

If the BHA determines that a qualifying financial hardship is temporary, the BHA must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family's request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay the BHA the amounts suspended. HUD requires the BHA to offer a reasonable repayment agreement, on terms and conditions established by the BHA. The BHA also may determine that circumstances have changed and the hardship is now a long-term hardship.

#### BHA Policy

The BHA will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

#### ***Long-Term Hardship***

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

#### BHA Policy

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

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.
- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

#### **PRORATION OF ASSISTANCE FOR "MIXED" FAMILIES [24 CFR 5.520]**

Proration of assistance must be offered to any "mixed" applicant or participant family. A "mixed" family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible members.

"Mixed" families that were participants on June 19, 1995, and that do not qualify for continued assistance must be offered prorated assistance. (See Chapter 12, "Re-certifications.") Applicant mixed families are entitled to prorated assistance. Families that become mixed after June 19, 1995 by addition of an ineligible member are entitled to prorated assistance.

**Prorated Assistance Calculation:** Prorated assistance is calculated by determining the amount of assistance payable if all family members were eligible and multiplying by the percent of the family members who actually are eligible. Total Tenant Payment is the gross rent minus the prorated assistance.

## **UTILITY ALLOWANCE AND UTILITY REIMBURSEMENT PAYMENTS**

The Utility allowance is intended to help defray the cost of utilities not included in the rent and is subtracted from Total Tenant Payment to establish the family's rent to the landlord. It is updated annually by HUD and based on the typical cost of utilities and services paid by energy- conservative households that occupy housing of similar size and type in the same locality. Allowances are not based on the individual family's actual energy consumption.

The updated and approved utility allowance schedule is given to families along with their Voucher during the briefing session. The appropriate utility allowance will be used based on the lesser of size of unit rented by family or voucher size issued as determined under the Authority's subsidy standards. The utility allowances will be applied in a participant family's rent calculation at the next reexamination.

Where the utility allowance exceeds the family's Total Tenant Payment, the Authority will provide a utility reimbursement payment for the family each month. The check will be made out directly to the tenant unless the tenant has agreed, in writing, to a payment directly to the utility company. The utility bill must be in the name of the head of household, spouse or co- head of household. A Utility Allowance will not be provided during the period that the utilities are not in the name of the head of household/co-head.

Section 242 established a cap on the utility allowance for families leasing oversized units. The cap is set at an amount based on family size rather than the size of the unit leased, with the ability to set a higher amount to provide a reasonable accommodation to the family of a person with disabilities, corresponding the utility allowance with the payment standard requirement.

In cases where a reasonable accommodation has been provided to a family that includes a person with disabilities, the Authority will use the appropriate utility allowance for the size of the dwelling unit leased by the family.

### **Reasonable Accommodation and Individual Relief**

Upon request from a family that includes a person with disabilities, the BHA 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(e)]. See Chapter 1 for policies regarding the request and approval of reasonable accommodations.

Further, the BHA may grant requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, as the BHA deems appropriate. The family must request the higher allowance and provide the BHA with an explanation of the need for the individual relief and information about the amount of additional allowance required [see HCV GB, p. 18-8].

PHAs should develop criteria for granting individual relief and to notify residents about the availability of individual relief, and also to notify participants about the availability of individual relief programs (sometimes referred to as “Medical Baseline discounts”) offered by the local utility company. Policies for granting exception utility allowances can be found in Section 6-III.D. of this plan.

### **Utility Allowance Revisions**

The BHA must review its schedule of utility allowances each year and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised [24 CFR 982.517(c)(1)].

The BHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

At reexamination, the BHA must use the current utility allowance schedule [HCV GB, p. 18-8].

### **BHA Policy**

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

## Chapter 8

### VERIFICATION

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH 2023-27]

#### INTRODUCTION

The BHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain written authorization from the family in order to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance.

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

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

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

#### PART I: GENERAL VERIFICATION REQUIREMENTS

##### A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516; 982.551; CFR 5.230; and Notice PIH 2023-27]

###### Consent Forms

The family must supply any information that the BHA or HUD determines is necessary to the administration of the program and must consent to BHA 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 BHA may 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 participants sign form HUD-9886, Authorization for Release of Information. All adult family members (and the head and spouse/cohead, regardless of age) are required to sign the Form HUD-9886 at admission. Participants, prior to January 1, 2024, signed and submitted Form HUD-9886 at each annual reexamination. HOTMA eliminated this requirement and instead required that the Form HUD-9886 be signed only

once. On or after January 1, 2024 (regardless of the BHA's HOTMA compliance date), current program participants must sign and submit a new Form HUD-9886 at their next interim or annual reexamination. This form will only be signed once. Another Form HUD-9886 will not be submitted to the BHA 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 BHA in administrative instructions.

The BHA 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.

### BHA 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 reexamination.

The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the BHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA).

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

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

### **Penalties for Failing to Consent [24 CFR 5.232]**

If any family member who is required to sign a consent form fails to do so, the BHA must deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with BHA 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 BHA to access financial records from financial institutions, unless the BHA establishes a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance

[24 CFR 5.232(c)]. PHAs may not process interim or annual reexaminations of income without the family's executed consent forms.

### BHA Policy

The BHA 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 BHA policy.

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

Within 10 business days of the date the family provides written notice, the BHA 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.

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

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

Means-tested federal public assistance programs include:

- Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601, et seq.);
- Medicaid (42 U.S.C. 1396 et seq.);
- Supplemental Nutrition Assistance Program (SNAP) (42 U.S.C. 2011 et seq.);
- Earned Income Tax Credit (EITC) (26 U.S.C. 32);
- Low-Income Housing Credit (LIHTC) program (26 U.S.C. 42);
- Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC) (42 U.S.C. 1786);
- Supplemental Security Income (SSI) (42 U.S.C. 1381 et seq.);
- Other programs administered by the HUD Secretary;
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding; and
- Other federal benefit determinations made in other forms of means-tested federal public assistance that the Secretary determines to have comparable reliability and announces through the Federal Register.

If the BHA elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income



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

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

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

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

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

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

#### BHA Policy

BHA has adopted a policy not to use Safe Harbor income determinations from other federal means-tested forms of assistance.

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

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years,

the BHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or other inflationary adjustment factor. Streamlining policies are optional. The BHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the BHA must perform third-party verification of all income sources.

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

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

When 90 percent or more of a family's unadjusted income is from fixed sources, the BHA may apply the inflationary adjustment factor to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed and that their sources of fixed income have not changed from the previous year. Sources of non-fixed income are not required to be adjusted and must not be adjusted by a COLA, but PHAs may choose to adjust sources of non-fixed income based on third-party verification. PHAs have the discretion to either adjust the non-fixed income or carry over the calculation of non-fixed income from the first year to years two and three.

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

### BHA Policy

BHA will use a streamlined income determinations for all fixed sources of income where applicable.

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

The BHA 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.

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

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

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

The BHA 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.

In the following circumstances, regardless of the percentage of income received from fixed sources, the BHA will obtain third-party verification as outlined in Notice PIH 2023-27:

All assets regardless of the amount;

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.

**D. VERIFICATION HIERARCHY [Notice PIH 2023-27]**

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

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

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the BHA to use the most reliable form of verification that is available and to document the reasons when the BHA uses a lesser form of verification.

HUD developed a hierarchy that described verification documentation from most acceptable to least acceptable. The BHA 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.

### **File Documentation**

The BHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family’s file in sufficient detail to demonstrate that the BHA 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.

### **LEVEL 5 AND 6 VERIFICATION: UP-FRONT INCOME VERIFICATION (UIV)**

Up-front income verification (UIV) refers to the BHA’s use of the verification tools available from independent sources that maintain computerized information about earnings and benefits for a number of individuals. PHAs may use UIV sources before or during a family reexamination.

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

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

### **Upfront Income Verification Using HUD’s Enterprise Income Verification (EIV) System (Mandatory)**

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

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

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

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

### **EIV Income and IVT Reports**

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

- At annual reexamination if the BHA 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 BHA 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.

### **BHA Policy**

The BHA will obtain EIV income and IVT reports for all annual reexaminations for all families on a monthly basis. The BHA 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 BHA 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 16.

## **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 BHA requires an interim for increases in earned income after an interim decrease, then the BHA must review the report quarterly after the family's interim decrease.

### BHA Policy

In accordance with BHA policies in Chapter 13, the BHA will process interim reexaminations for families who have increases in earned income.

### 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 BHA must identify its policies and procedures when this report will be pulled [Notice PIH 2023-27].

### BHA Policy

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

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

When the BHA 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 16.

## **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.

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

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

#### BHA Policy

The BHA will identify participants whose identity verification has failed by reviewing EIV's Identity Verification Report on a monthly basis.

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

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

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

#### BHA Policy

The BHA will review the Deceased Tenants Report on a monthly basis.

When the Deceased Tenants Report identifies an individual as being deceased, PHAs must immediately send a letter to the head of household or emergency contact person (if the head of household is deceased and there is no other adult household member) to confirm the death of the listed household member. The BHA must notify the owner in writing of the deceased head of household.

PHAs 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.

#### BHA Policy

The BHA 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. The BHA may not designate the live-in aide as the new head of household or change the relation code on the Form HUD-50058.

#### ***Other EIV Reports [Notice PIH 2023-27]***

The BHA is required to review the Multiple Subsidy Report at least quarterly and the Failed EIV Pre-Screening and Failed Verification (Failed SSA Identity Test) reports at least monthly.

## **Upfront Income Verification Using Non-HUD Systems**

HUD encourages PHAs to utilize other upfront verification sources such as the Work Number and web-based state benefits systems.

### BHA Policy

The BHA will inform all applicants and participants of its use of the following UIV resources. (State Wage Income Collection Agency (SWICA), Work number)

### **LEVEL 4 VERIFICATION [Notice PIH 2023-27]**

HUD identifies two types of Level 4 verification: written-third party verification from the source and EIV + self-certification.

#### **EIV + Self-Certification**

EIV may be used as written third-party verification and may be used to calculate income if the family agrees with the information in EIV and self-certifies that the amount is accurate and representative of current income. This practice is known as EIV + self-certification. When calculating income using this method, the BHA 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.

### BHA Policy

At annual reexamination, if the BHA is unable to use a determination of income and if there are no reported changes to an income source, the BHA will use EIV + self-certification as verification of employment income, provided the family agrees with the amounts listed in EIV.

The BHA will use an average of the last two quarters of income listed in EIV to determine income from employment. The BHA will provide the family with the information in EIV. The family will be required to sign a self-certification stating that the amount listed in EIV is accurate and representative of current income. If the family disagrees with the amount in EIV, the amount is not reflective of current income, or if less than two quarters are available in EIV, the BHA will use written third-party verification from the source as outlined below.

The BHA will not use this method of verification at new admission since EIV is not available for applicant families or at interim reexamination since the income information in EIV is not current.

#### **Written Third-Party Verification from the Source**

Written, third-party verification from the source is also known as “tenant-provided verification.” In order to qualify as written-third party verification from the source, the documents must be original or authentic and (generally) dated within 120 days of the date received by the BHA. For fixed-income sources, a statement dated within the appropriate



benefit year is acceptable documentation. Documents may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

The BHA is required to obtain, at minimum, two current and consecutive pay stubs when calculating income using third-party verification from the source. For new income sources or when two pay stubs are not available, the BHA should determine income based on the information from a traditional written, third-party verification form or the best available information.

When the family disputes EIV-reported employment income, the BHA uses written third-party verification.

When verification of assets is required, PHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

#### BHA Policy

In general, the BHA 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.

In general, third-party documents provided by the family or the source must be dated within 120 days of the date received by the BHA. However, for fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

The BHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible. If the BHA determines that third-party documents provided by the family are not acceptable, the BHA will request additional documentation from the family or will use a lower form of verification such as a written third-party verification form.

When verification of assets held by a banking or financial institution is required, the BHA will obtain 3 months consecutive worth of checking account statements and one statement that reflects the current balance of any other assets.

When pay stubs are used, the BHA will require the family to provide the two most current, consecutive pay stubs. At the BHA’s discretion, if additional paystubs are needed due to the family’s circumstances (e.g., sporadic income, fluctuating schedule, etc.), the BHA may request additional paystubs or a payroll record.

**LEVEL 3 VERIFICATION: WRITTEN, THIRD-PARTY FORM**  
**[Notice PIH 2023 27]**

This type of verification is a form developed by the BHA and used uniformly for all families when needed to collect information from a third-party source. This is known as “traditional third-party verification.” PHAs send a BHA-developed form directly to the third-party source by mail, fax, or email and the source completes the form by hand (in writing or typeset).

The BHA may use this method when higher forms are unavailable or are rejected by the BHA or when the family is unable to provide acceptable verification. The BHA may skip this level of verification and may instead substitute oral third-party verification before moving to self-certification.

BHA Policy

Typically, the BHA will attempt to send written third-party verification forms to the verification source whenever higher forms of verification are unavailable.

However, on a case-by-case basis, the BHA may choose to obtain oral third-party verification without first attempting, and in lieu of, a written-third party verification form.

**LEVEL 2: ORAL THIRD-PARTY VERIFICATION [Notice PIH 2023-27]**

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

PHAs must document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed. The BHA 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.

BHA Policy

In general, the BHA will attempt to obtain written third-party verification via a form from the verification source. If written third-party verification forms are not returned within 10 business days, the BHA will accept self-certification from the family without attempting to obtain oral third-party verification.

However, if the BHA chooses to obtain oral third-party verification, the BHA will document in the file the date and time of the telephone call or visit, the name of the person contacted and the telephone number, as well as the information confirmed

## **When Third-Party Verification is Not Required [Notice PIH 2023-27]**

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

### BHA Policy

If the family cannot provide original documents, the BHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost.

### **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**

HUD permits PHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

### BHA Policy

The BHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

## **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 the BHA has not been successful in obtaining information via all other required verification techniques.

Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded
- Net family assets total \$50,000 or less and the PHA has adopted a policy to accept self certification
- The family declares that they do not have any present ownership in any real property
- A family states that they have non-recurring income that will not be repeated in the coming year; and/or

- The BHA has adopted a policy to implement streamlined annual recertifications for fixed sources of income

When the BHA 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.

### BHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the BHA.

The BHA may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the BHA 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**

**Verification of Legal Identity:** In order to prevent Program abuse, the Authority will require applicants to furnish verification of legal identity for all family members. The documents listed below will be considered acceptable verification of legal identity for adults. If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

- Certificate of Birth, naturalization papers
- Church issued baptismal certificate
- Current, valid NJ Driver's license (photo only)
- U.S. military discharge (DD 214)
- U.S. passport
- Company/agency Identification Card
- Department of Motor Vehicles Identification Card (photo only)
- Hospital records

Documents considered acceptable for the verification of legal identity for minors may be one or more of the following:

- Certificate of Birth
- Adoption papers
- Custody agreement
- Health and Human Services ID
- School records

If none of these documents can be provided, a third party who knows the person may, at the Authority's discretion, provide verification.

**Verification of Marital Status:** Verification of marriage status is a marriage certificate. Verification of divorce status will be a certified copy of the divorce decree, signed by a Court Officer. Verification of a separation may be a copy of court-ordered maintenance or other records.

**Separation or Divorce:** Certification by the head of household is normally sufficient verification. If the BHA has reasonable doubts about a separation or divorce, the BHA will require the family to provide documentation of 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.

**Familial Relationships:** Certification will normally be considered sufficient verification of family relationships. In cases where reasonable doubt exists, the family may be asked to provide verification. The following verifications will always be required if applicable:

*For verification of relationship:*

- Official identification showing names or Birth Certificates
- Baptismal certificates
- Adoption papers

*For verification of guardianship:*

- Court-ordered assignment
- Verification from social services agency
- School records

**Verification of Permanent Absence of Adult Member:** If an adult member who was formerly a member of the household is reported permanently absent by the family, the Authority will consider any of the following as verification:

- Legal papers documenting a spouse instituted divorce or legal separation action.

- Order of protection/restraining order obtained by one family member against another.
- Proof of another home address, such as utility bills, canceled checks for rent, driver's license, or lease/rental agreement, if available.
- Statements from other agencies, such as social services, or a written statement from the landlord or manager that the adult family member is no longer living at that location.
- If no other proof can be provided, the Authority may accept a self-certification from the family.
- If the adult family member is incarcerated, a document from the Court or prison should be obtained stating how long they will be incarcerated.

**Foster Children and Foster Adults:** Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

**Verification of Change in Family Composition:** The Authority may verify changes in family composition (either reported or unreported) through letters, telephone calls, utility records, inspections, landlords, neighbors, credit data, school or DMV records, and other sources.

**Verification of Disability:** Verification of disability must be receipt of SSI or SSA disability payments under Section 223 of the Social Security Act or 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)). A disability may also be verified by appropriate diagnostician such as physician, psychiatrist, psychologist, therapist, rehab specialist, or licensed social worker, using the HUD definition as the verification format.

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

**Family Members Receiving SSA Disability Benefits:** Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions

For family members claiming disability who receive disability benefits from the SSA, the BHA will attempt to obtain information about disability benefits through the HUD Enterprise Income verification (EIV) system. If documentation from HUD's EIV System is not available, the BHA 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), the BHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or participant receives the benefit verification letter they will be required to provide it to the BHA.

**Family Members Not Receiving SSA Disability Benefits:** Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403.

For family members claiming disability who do not receive disability benefits 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.

## **A. 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. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and BHA 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 citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The BHA may request verification of the declaration by requiring presentation of a birth certificate, passport or other appropriate documentation.

### **BHA Policy**

Family members who claim citizenship or national status will be required to provide one of the following: a birth certificate, naturalization paperwork, or USA passport.

### **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 8-1 at the end of this chapter summarizes documents family members must provide.

***BHA Verification*** [HCV GB, pp. 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in this chapter. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the BHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The BHA will follow all USCIS protocols for verification of eligible immigration status.

## **B. VERIFICATION OF STUDENT STATUS**

**General Requirements:** The BHA 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 their education.

The family includes a student enrolled in an *institution of higher education*.

### **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.

In accordance with the verification hierarchy described in chapter 8, the BHA 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 Chapter 2.

The student is married.

The student has at least one dependent child, as defined in Chapter 2.

The student is a person with disabilities, as defined in Chapter 2 and was receiving assistance prior to November 30, 2005.

If the BHA cannot verify at least one of these exemption criteria, the BHA 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, the BHA will then proceed to verify either the student's parents' income eligibility (see chapter 8) or the student's independence from their parents (see below).

***Independent Student:*** The BHA will verify a student's independence from their 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 their 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 chapter 2)

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 chapter 2)

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 the BHA determines that the student is a *vulnerable youth* (see chapter 2)

### **C. SOCIAL SECURITY NUMBERS [24 CFR 5.216, Notice PIH 2023-271]**

The family must provide documentation of a valid Social Security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include existing 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 their 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.

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

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

While PHAs must attempt to gather third-party verification of SSNs prior to admission as listed above, PHAs also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the BHA has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, the BHA 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 BHA 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.

#### BHA Policy

The BHA will verify an individual's SSN in the situations described above using the method described above as a last resort when no other forms of verification of the individual's SSN are available.

The BHA may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document or if the original document has been altered, mutilated, is illegible, or appears to be forged.

#### BHA Policy

The BHA 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 the BHA within 90 days.

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 BHA 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.

#### BHA Policy

The BHA 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. If the individual fails to

comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the BHA will terminate the individual's assistance.

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of 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 the BHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control.

#### BHA Policy

The BHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a 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. The BHA 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 BHA 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 BHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

#### BHA Policy

The BHA 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.

#### BHA Policy

The BHA 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," the BHA may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

#### BHA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, the BHA will not remove and destroy copies of documentation accepted as evidence of social security numbers.

### **D. 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.

#### BHA Policy

The BHA will accept one of the following forms of verification (e.g., birth certificate, USA passport, residency card, or driver's license.)

Age must be verified only once during continuously assisted occupancy.

### **E. 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 Glossary chapter of this policy.

#### BHA 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.

### **VERIFICATION OF PREFERENCE STATUS**

The BHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

## WAITING LIST PREFERENCES [24 CFR 5.410-5.430]

### Local Preferences

#### 1. *Involuntary Displacement:*

- a. Families who claim they are being or have been displaced due to either a disaster or government action: written verification by the displacing unit or agency of government, or by a service agency such as the Red Cross.
- b. Families who claim they are being or have been displaced because of actions taken by the owner/agent of the unit the family is renting: Notification by owner to family of the action/ written verification by the owner or agent/documents such as sales agreements, foreclosure notices or building permits.
- c. Families who claim they are being or have been displaced due to domestic violence:
- d. Requires written verification from police, social service agency, court, clergy person, physician, and/or public or private facility giving shelter and/or counseling to victims.
- e. Families who claim to be displaced by hate crimes and submit a written statement from law enforcement agency, HUD, Fair Housing or other agency responsible for non-discrimination advocacy. Statement should contain approximate number of occurrences and date of last occurrence.
- f. Displacement by inaccessibility of unit requires a statement from the owner of the unit that critical elements are inaccessible, and that the owner is not going to make the needed modifications, or permit the family to make the modifications.
- g. Displacement by HUD disposition of a project: Written verification from HUD.
- h. Determination of Standard Replacement Housing: Inspection by an Authority inspector.

#### 2. *Living in Substandard Housing:*

- Families who claim to be living in a substandard housing unit must provide written verification by a government agency and a completed inspection certified by family head of household
- a) "Homeless" families must provide a written certification by a public or private facility providing shelter, the police, or a social services agency. Prior to processing the application, the Authority requires a second certification from the same source that the applicant is not yet permanently housed and has been continuously homeless or temporarily housed since claiming the preference. If a family is in transitional housing and wishes the Authority to hold the family's place on the waiting list, a statement is required from the agency providing the transitional housing.

#### 3. *Rent Burden: Paying more than fifty percent (50%) of income for rent:*

Families will be required to verify their income, the amount of rent and utilities they are

obligated to pay, and the period of time they have been residing in the unit. They must furnish copies of rental receipts/the lease/canceled checks/money orders. The Authority may contact the landlord directly by mail or telephone. The Authority compares the address with address(es) used on other documents in the file. If there is no rental agreement, and no other landlord verification, the Authority will require documentation for three (3) months.

4. *Veterans Preference:*

Certification of service in the Armed Forces with a discharge status other than dishonorable is required.

5. *Disabled Person 18 – 61 Years of Age:*

To qualify for a Mainstream Voucher, the disabled person must be between the ages of 18 and 61 years old. Verification of age has already been established through eligibility documents including birth certificates. Verification of a disability can be established through the following methods:

- The disabled family member's receipt of Social Security Disability (SSD) benefits or Supplemental Security Income (SSI);
- Per 42 U.S.C. § 423(d)(1), meets the definition of "disability" as the 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.
- The person with disabilities furnishes written verification of the disability from a professional licensed to diagnose and treat the disability and their certification that the disability is expected to be long-continuing or of indefinite duration and substantially impedes the individual's ability to live independently;
- Documentation verifying a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury, AIDS, HIV, as well as a developmental disability as per 24 CFR, Chapter V, Part 582 Subpart A, § 582.100 and defined in 42 U.S.C. 6001;
- Provides other documentation approved by HUD.

## **Ranking Preference - Residency**

In selecting applicants for participation in the Section 8 HCV Program, Bayonne residents will be given first preference at all times. A Bayonne resident is defined as a person residing within the City of Bayonne limits. *Note: the residency preference does not guarantee admission into the Program. Every applicant must still meet all eligibility requirements.* In order to verify that an applicant is a resident, the Authority will require a minimum of two (2) of the following documents: utility bills, employer or agency records, school records, drivers licenses, credit reports, notarized statement from household with whom the family is residing.

## **PART III: VERIFYING INCOME AND ASSETS**

Chapter 7 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 income reported by the family must be verified. This part provides BHA policies that supplement the general verification procedures specified in Part I of this chapter.

### **A. EARNED INCOME**

#### **Tips**

##### **BHA Policy**

Unless tip income is included in a family member's W-2 by the employer or in UIV verification sources, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year or tips anticipated to be received in the coming year.

#### **Wages**

##### **BHA Policy**

When the BHA requires third-party verification of wages, for wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

## **BUSINESS AND SELF EMPLOYMENT INCOME**

The BHA must obtain written, third-party verification when the income type is not available in EIV. This includes income from self-employment.

##### **BHA 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 BHA 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 BHA will provide a format for the individual to declare their income and expenses. The BHA 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.

The BHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the BHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the BHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the BHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

## **B. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

### **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 BHA 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 BHA should [help](#) the applicant request a benefit verification letter from SSA’s website at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. The BHA 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 BHA 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 BHA 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 BHA 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 BHA 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 BHA should [help](#) the participant request a benefit verification letter from SSA's website at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. The BHA 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.

### C. **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.

#### BHA Policy

The methods the BHA will use to verify alimony and child support payments differ depending on whether the family declares that it receives regular payments.

If the family declares that it receives regular payments, verification will be obtained in the following order of priority:

Documentation for the 3 months prior to BHA request

Third-party verification form from the state or local child support enforcement agency

Third-party verification form from the person paying the support  
Family's self-certification of amount received

Note: Families are not required to undertake independent enforcement action.

**D. NONRECURRING INCOME [Notice PIH 2023-27]**

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. PHAs may accept a self-certification from the family stating that the income will not be repeated in the coming year.

BHA Policy

The BHA will accept self-certification from the family stating that income will not be repeated in the coming year. However, the BHA may choose, on a case-by-case basis, to require third-party verification that income sources will not be repeated in the coming year.

**E. ASSETS AND INCOME FROM ASSETS**

**Net Family Assets [24 CFR 5.603]**

At admission and reexam, for families with net assets totaling \$50,000 or less (adjusted annually), the BHA may, but is not required to, accept the family's self-certification that the family's assets do not exceed \$50,000 without taking any additional steps to verify the accuracy of the declaration. The declaration must include the amount of income the family expects to receive from assets which must be included in the family's income. This includes declaring income from checking and savings accounts which, although excluded from the calculation of net family assets (because the combined value of non-necessary personal property does not exceed \$50,000), may generate asset income. PHAs must clarify during the self-certification process which assets are included/excluded from net family assets.

For PHAs that choose to accept self-certification, the PHA is required to obtain third-party verification of all assets, regardless of the amount, at least once every three years. PHAs who choose not to accept self-certifications of assets must verify all families' assets on an annual basis.

When net family assets have a total value over \$50,000, the BHA may not rely on the family's self-certification. Third-party verification of assets is required when net family assets exceed \$50,000, adjusted annually by HUD.

When verification of assets is required, PHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

BHA Policy

The BHA has chosen not to accept self-certifications of assets. Therefore, all assets will be verified on an annual basis as follows:

BHA will obtain a minimum of three consecutive bank statements for checking account

BHA will obtain a minimum of one current financial statement for all other assets (e.g., savings, CDs, Money Market, Trust Accounts, etc.)

Any income the family expects to receive from assets will be included in the family's annual income.

In determining the anticipated income from an interest-bearing checking or savings account and when the rate of return is known, the BHA will multiply the current balance of the account by the current rate of interest paid on the account. If a checking account does not bear interest, the anticipated income from the account is zero.

### **Self-Certification of Real Property Ownership [24 CFR 5.618(b)(2)]**

The BHA 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 16. At admission and reexam, the BHA may accept a self-certification from the family that the family does not have any present ownership in any real property that is suitable for occupancy. If the family declares they have present ownership in real property, the BHA must obtain third-party verification.

#### BHA Policy

Both at admission and reexam, the BHA will accept self-certification from the family that the family does not have any present ownership in any real property. The certification will state that the family does not have any present ownership interest in any real property and must be signed by all family members 18 years of age and older. The BHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question.

If the family declares they have a present ownership in real property, the BHA will obtain third-party verification of the following factors: whether the family has the legal right to reside in the property; whether the family has effective legal authority to sell the property; and whether the property is suitable for occupancy by the family as a residence. However, in cases where a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the BHA will comply with confidentiality requirements under 24 CFR 5.2007 and will accept a self-certification.

### **ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE**

The Authority must count assets disposed of for less than Fair Market Value during the years (2) preceding certification or reexamination. The Authority will count the difference between the market value and the actual payment received in calculating total assets. Assets disposed of as a result of foreclosure or bankruptcies are not considered to be assets disposed of for less than Fair Market Value. Assets disposed of as a result of a divorce or separation is also not considered to be assets disposed of for less than Fair Market Value. The Authority's minimum threshold for counting assets disposed of for less than Fair Market Value is \$5,000. If the total value of assets disposed of within a one-year period is less than \$5,000, they will not be considered an asset

## BHA Policy

The BHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

The BHA will verify the value of assets disposed of only if:

- The BHA 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.

## **NET INCOME FROM RENTAL PROPERTY**

### BHA Policy

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income).
- If schedule E was not prepared, the BHA 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.

## **FEDERAL TAX REFUNDS OR REFUNDABLE TAX CREDITS [Notice PIH 2023-27]**

PHAs are not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below \$50,000 (adjusted annually for inflation), even in years when full verification of assets is required or if the BHA does not accept self-certification of assets. PHAs must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than \$50,000.

## **RETIREMENT ACCOUNTS**

### BHA Policy

The BHA 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.

**F. INCOME FROM EXCLUDED SOURCES [Notice PIH 2023-27]**

A detailed discussion of excluded income is provided in Chapter 7.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, the BHA 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).

PHAs may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, PHAs have the option of requiring additional verification.

For partially excluded income, the BHA 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).

**BHA Policy**

The BHA will accept the family's self-certification as verification of fully excluded income. The BHA may request additional documentation if necessary to document the income source.

The BHA will verify the source and amount of partially excluded income as described in this chapter.

**G. ZERO INCOME STATUS REVIEWS [Notice PIH 2023-27]**

A zero income review is an assessment, sometimes periodic, performed by the BHA 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.

### BHA Policy

The BHA will check UIV sources and/or may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, earned income, child support, etc. are not being received by families claiming to have zero annual income.

The BHA will also require that each family member who claims zero income status complete a revised zero-income form that will meet the requirements. If any sources of income are identified on the form, the BHA will verify the income in accordance with the policies in this chapter prior to including the income in the family's annual income.

The BHA will only conduct interims in accordance with BHA policy in Chapter 13.

## **H. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9)]**

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the federally mandated income exclusions are excluded [24 CFR 5.609(b)(9)(ii)].

### BHA Policy

The BHA will request written third-party verification of both the source and the amount of student financial assistance. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, unless the student's only source of assistance is assistance under Title IV of the HEA, the BHA will request written verification of the cost of the student's tuition, books, supplies, room and board, and other required fees and charges to the student from the educational institution.

If the BHA is unable to obtain third-party written verification of the requested information, the BHA will pursue other forms of verification following the verification hierarchy in this chapter.

## **PART IV: VERIFYING MANDATORY DEDUCTIONS**

### **A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that the BHA 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 7 for a full discussion of this deduction. The BHA must 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 Eligibility chapter for a definition of elderly and disabled families and Chapter 7 for a discussion of the deduction. The BHA must verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

### **HEALTH AND MEDICAL CARE EXPENSE DEDUCTION**

Policies related to medical expenses are found in Chapter 7. The amount of the deduction will be verified following the standard verification procedures described in this chapter.

The BHA 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 BHA 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 BHA must redact all personally identifiable information [FR Notice 2/14/23].

#### **Amount of Expense**

##### BHA 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, the BHA will make a best effort to determine what expenses from the past are likely to continue to occur in

the future. The BHA 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, the BHA will redact all personally identifiable information.

If the BHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the BHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the BHA 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 BHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

In addition, the BHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified health and medical care expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

### **Eligible Household**

The health and medical care expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62, or a person with disabilities. The BHA must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 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 7 for the BHA's policy on what counts as a medical expense.



## **Unreimbursed Expenses**

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

### **Expenses Incurred in Past Years**

At new admission and interim reexam, when anticipated costs are related to on-going payment of medical bills incurred in past years, the BHA 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

## **B. DISABILITY ASSISTANCE EXPENSES**

The BHA 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 BHA 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 BHA must redact all personally identifiable information [FR Notice 2/14/23].

### **Amount of Expense**

#### *Attendant Care*

#### BHA Policy

Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or cancelled checks.

Third-party verification form signed by the provider, if family-provided documents are not available.

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, the BHA will redact all personally identifiable information.

If the BHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the BHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of,

the BHA 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 BHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

### ***Auxiliary Apparatus***

#### BHA Policy

Expenses for auxiliary apparatus will be verified through:

Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the BHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities
- The expense permits a family member, or members, to work
- The expense is not reimbursed from another source

### **C. CHILD CARE EXPENSES**

Policies related to child care expenses are found in Chapter 7. The amount of the deduction will be verified following the standard verification procedures in this chapter. In addition, the BHA must verify that:

- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.

- The costs enable a family member to work, actively seek work, or further their education.
- The costs are for an allowable type of child care.
- The costs are reasonable.

### **Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The BHA will verify that the child being cared for (including foster children) is under the age of 13

### **Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

### BHA Policy

The family (and the care provider) will be required to certify that the child care expenses are not paid or reimbursed to the family from any source.

**Live-In Aide Care:** *Live-in aide* is 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.

A participant may request 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 the 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. Relatives may be approved as Live-In Aides if they meet all the criteria defining a Live-In Aide. However, a relative who serves as a Live-In Aide is not considered a family member and would not be considered a remaining member of a tenant family.

A family's request for a Live-In Aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional that the Live-In Aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. For continued approval, the family must submit a new written request, subject to Authority verification, at each annual reexamination.

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. The Authority may not approve a person as a Live-In Aide, or may withdraw such approval in accordance with its Live In Aide Policy.

**EXHIBIT 8-1: SUMMARY OF DOCUMENTATION REQUIREMENTS  
FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]**

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

**Elderly Noncitizens**

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

**All other Noncitizens**

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
  - “Admitted as a Refugee Pursuant to Section 207”
  - “Section 208” or “Asylum”
  - “Section 243(h)” or “Deportation stayed by Attorney General”
  - “Paroled Pursuant to Section 221 (d)(5) of the USCIS”

- Form I-94 Arrival-Departure Record with no annotation accompanied by:
  - A final court decision granting asylum (but only if no appeal is taken);
  - A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
  - A court decision granting withholding of deportation; or
  - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

- Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.

Form I-688B Employment Authorization Card annotated “Provision of Law 274a.12(11)” or “Provision of Law 274a.12”.

- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*

## Chapter 9

### VOUCHER ISSUANCE AND BRIEFINGS

#### INTRODUCTION

The Authority's objectives are to assure that families selected to participate are successful in obtaining an acceptable housing unit, and that they have sufficient knowledge to derive maximum benefit from the program and to comply with program requirements. When families have been determined to be eligible, the Authority will conduct a mandatory briefing to ensure that families know how the program works. The briefing will provide a broad description of owner and family responsibilities, the Authority procedures, and how to lease a unit. The family will also receive a briefing packet which provides more detailed information about the program, including the benefits of moving outside areas of low-income concentration. This Chapter describes how briefings will be conducted, the information that will be provided to families, and the policies for how changes in the family composition, income, etc. will be handled.

#### A. ISSUANCE OF VOUCHERS [24 CFR 982.302 (d), 982.54(d)(2)]

When funding is available, the Authority will issue Vouchers to eligible applicants. The issuance of Vouchers must be within the dollar limitations set by the ACC (Annual Contributions Contract) budget. The number of Vouchers issued must ensure that the Authority maintains a maximum 100% lease-up. The Authority performs a monthly calculation electronically to determine whether applications can be processed, the number of Vouchers that can be issued, and to what extent the Authority can over-issue (issue more Vouchers than the budget allows).

The Authority may over-issue Vouchers only to the extent necessary to meet leasing goals. If the Authority finds it is over-leased, it must adjust future issuance of Vouchers in order not to exceed the ACC budget limitations over the fiscal year.

**Notification and Attendance:** Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing. 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, the applicant will be denied assistance and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.

#### B. BRIEFING TYPES AND REQUIRED ATTENDANCE [24 CFR 982.301]

**Initial Applicant Briefing:** A full HUD-required briefing will be conducted for applicant families who are determined to be eligible for assistance. The briefings will be conducted in individual meetings or in virtual group settings such as via Zoom or other platforms. Briefings for the Voucher Program will be held separately. Briefings will be conducted in English. The Authority will make arrangements for non-English speaking applicants. The purpose of the briefing is to explain the documents in the HCV holder's packet to families

so that they are fully informed about the program. This will enable them to utilize the program to their advantage, and it will prepare them to discuss it with potential owners and property managers.

The Authority will not issue a Voucher to a family unless the household representative has attended a briefing and signed the Voucher. Applicants who provide prior notice of inability to attend a briefing will automatically be scheduled for another briefing. Applicants who fail to attend one-scheduled briefings, without prior notification and approval of the Authority, may be denied admission based on failure to supply information needed for certification. The Authority will conduct individual briefings for families with disabilities at their home, upon request by the family, if required as a reasonable accommodation.

**Oral Briefing:** 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 the Authority's jurisdiction;
- For families eligible under portability, an explanation of portability. The Authority cannot discourage eligible families from moving under portability;

**Briefing Packet:** The documents and information provided in the briefing packets for the voucher programs will comply with all HUD requirements. The Authority also includes other information and/or materials which are not required by HUD. The family is provided with the following information and materials:

- Term of the Voucher, and the Authority's policy for requesting extensions to the term of the Voucher or suspension.
- Description of the method used to calculate the Housing Assistance Payment (HAP) for a family, information on payment standards, and utility allowances.
- An explanation of how the maximum allowable rent is determined including the procedures for determining rent reasonableness. Guidance and materials to assist the family in selecting a unit, such as proximity to employment, public transportation, schools, shopping, and the accessibility of services.
- Guidance will also be provided to assist the family to evaluate the prospective unit, such as the condition, whether the rent is reasonable, average utility expense, energy efficiency, and security.
- The boundaries of the geographical area in which the family may lease a unit including an explanation of portability.
- Sample of the HUD or owner's lease and HUD Tenancy Lease addendum.
- A description of the procedure for requesting Lease approval for a unit. The Authority will provide the Request for Tenancy Approval Form ("RFTA")
- The Authority policy on providing information about families to prospective owners.

- The Subsidy Standards, including when and how exceptions are made and how the Voucher size relates to the unit size selected.
- HUD brochure on how to select a unit and/or the HUD brochure "A Good Place to Live" on how to select a unit that complies with HQS standards.
- The HUD brochure on lead-based paint and information about where blood level testing is available.
- Information on Federal, State and Local equal opportunity laws. The Authority will also provide information on reporting suspected discrimination and the phone numbers of the Local Fair Housing Agency and the HUD enforcement office.
- A list of landlords or other parties willing to lease to assisted families or help families find units.
- If the family includes a person with disabilities, notice that the Authority will provide assistance in locating accessible units and a list of available accessible units known to the Authority, if available.
- The Family Obligations under the program.
- The grounds on which the Authority determines termination of assistance because of family action or failure to act.
- Authority informal hearing procedures including: When the Authority is required to offer an informal hearing, how to request the hearing, and the hearing procedures.
- An HQS checklist and sample contract.
- Procedures for notifying the Authority and/or HUD of program abuses such as side payments, extra charges, violations of tenant rights, and owner failure to repair.
- The family's obligations under the program.
- Explanation of the portability.
- Grounds for termination of assistance because of family action or failure to meet obligations and informal review / hearing procedures.

**Other Information to be Provided at the Briefing:** The Authority Staff conducting the briefing will also describe how the Program works and the relationship between the family and the owner, the family and the Authority, and the Authority and the owner.

*The briefing presentation emphasizes:*

- Family and owner responsibilities;
- Where a family may lease a unit inside and outside its jurisdiction;
- How portability works for families eligible to exercise portability;
- Advantages to moving to area with low concentration of poor families if family is living in a high poverty census tract in the Authority's jurisdiction;
- How to choose a unit carefully and only after due consideration;

### **Additional Items to Be Included in the Briefing Packet**

In addition to items required by the regulations, PHAs may wish to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7, Notice PIH 2017-12].

#### BHA Policy

The BHA will provide the following additional materials in the briefing packet:

Information on how to fill out and file a housing discrimination complaint form

The form HUD-5380 domestic violence certification form and the form HUD-5382 notice of occupancy rights, which contain information on VAWA protections for victims of domestic violence, dating violence, sexual assault, and stalking

“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 2017-12

If the family includes a person with disabilities, the Authority will ensure compliance with HUD regulations to ensure effective communication.

**Move Briefing:** A move briefing may be held for participants who will be reissued a Voucher to move, and who have been re-certified within the last one hundred twenty (120) days, and have given notice of intent to vacate to their landlord. This briefing includes incoming and outgoing portable families. Families failing to attend a scheduled move briefing one (1) time will be denied a new Voucher based on failure to provide required information.

### **C. ENCOURAGING PARTICIPATION IN AREAS WITHOUT LOW INCOME OR MINORITY CONCENTRATION**

At the briefing, families are encouraged to search for housing in non-impacted areas and the Authority will provide assistance to families who wish to do so. The assistance provided to such families includes:

- Direct contact with landlords
- Counseling with the family
- Providing information about services in various non-impacted areas

### **D. ASSISTANCE TO FAMILIES WHO CLAIM DISCRIMINATION**

**Fair Housing Laws:** The Authority provides the family with a complaint form and the location of the local Fair Housing office. If HUD Fair Housing makes a finding of discrimination against an owner, the Authority will restrict the owner from future participation. The Authority provides the family with the HUD discrimination complaint



form and directs the family to report suspected discrimination to HUD.

E. **SECURITY DEPOSIT REQUIREMENTS** (*Leases Effective on or after October 2, 1995*)

Security deposits charged by owners may not exceed those charged to unassisted tenants nor the maximum prescribed by State or local law. For lease-in-place families, responsibility for first and last month's rent is not considered a security deposit issue. In these cases, the owner should settle the issue with the tenant prior to the beginning of assistance. The cost of the security deposit is not covered under the HCV Program.

F. **TERM OF VOUCHER [24 CFR 982.303]**

During the briefing session, each household will be issued a Voucher which represents a contractual agreement between the Authority and the Family specifying the rights and responsibilities of each party. It does not constitute admission to the program which occurs when the lease and contract become effective.

**Expirations:** The Housing Choice Voucher is valid for a period of sixty (60) calendar days from the date of issuance. The family must submit a lease and Tenancy Lease Addendum within the sixty-day (60) period unless an extension has been granted by the Authority. Upon the Authority's receipt of the request for tenancy approval, the search time for a unit will be suspended. Only one (1) form regarding the unit the tenant wishes to have subsidized may be submitted and in process by the Authority at a time.

If the Voucher has expired, and has not been extended by the Authority or expires after an extension, the family will be denied assistance. The family will not be entitled to a review or hearing. If the family is currently assisted, they may remain as a participant in their unit if there is an assisted lease/contract in effect.

**Suspensions:** When a Lease and Tenancy Lease Addendum is received, the Authority will not deduct the number of days required to process the request from the sixty (60) day term of the voucher.

**Extensions:** The Authority will grant extensions to the Voucher. A family may request an extension of the Voucher time period. All requests for extensions must be in writing and received prior to the expiration date of the Voucher. Extensions are permissible at the discretion of the Authority up to a maximum of one hundred twenty (120) days, primarily for these reasons:

- Extenuating circumstances such as hospitalization or a family emergency, which has affected the family's ability to find a unit within the initial sixty-day (60) period. Verification is required.
- The Authority is satisfied that the family has made a reasonable effort to locate a unit, including seeking the assistance of the Authority, throughout the initial sixty-day (60) period. A completed search record is required.
- The family was prevented from finding a unit due to the need to locate an accessible unit to accommodate a disabled family member or for the family's need for a unit with

a larger size bedroom as a requirement.

The Authority extends in thirty (30) day increments. Unless approved by the Executive Director, no more than two (2) extensions of thirty (30) days will be granted and never for a total of more than an additional sixty (60) days.

**Assistance to Housing Choice Voucher Holders:** Families who require additional assistance during their search may call the Authority to request assistance. Voucher holders will be notified at their briefing that the Authority periodically updates the listing of available units and how the updated list may be obtained. The Authority will assist families with negotiations with owners and provide other assistance related to the families' search for housing.

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

The BHA must provide for suspension of the initial or any extended term of the voucher from the date the family submits a request for BHA approval of the tenancy until the date the BHA notifies the family in writing whether the request has been approved or denied.

#### **G. VOUCHER ISSUANCE DETERMINATION FOR SPLIT HOUSEHOLDS**

When a family assisted under the Housing Choice Voucher Program becomes divided into two

(2) otherwise eligible families due to divorce, legal separation, or the division of the family, and the new families cannot agree as to which new family unit should continue to receive the assistance, and there is no determination by a court, the Authority shall consider the following factors to determine which of the families will continue to be assisted:

- Which of the two new family units has custody of dependent children.
- The composition of the new family units, and which unit contains elderly or disabled members.
- Whether domestic violence was involved in the breakup.
- Which family members remain in the unit.
- Recommendations of social service professionals.

Documentation of these factors will be required by the family. If documentation is not provided, the Authority will terminate assistance on the basis of failure to provide information necessary for a re-certification.

Where the breakup of the family also results in a reduction of the size of the Voucher, the family will be required to move to a smaller unit if the current landlord is unwilling to accept the rent level of the smaller sized voucher.

#### **H. REMAINING MEMBER OF TENANT FAMILY - RETENTION OF VOUCHER**

To be considered the remaining member of the tenant family, the person must have been previously approved by the Authority to be living in the unit. A Live-In-Aide, by definition, is not a member of the family and will not be considered a remaining member of the family.

In order for a minor child to continue to receive assistance as a remaining family member, the court has to have awarded emancipated minor status to the minor, or the Authority has to have verified that an appropriate agency has arranged for another adult to be brought into the assisted unit to care for the child(ren) for an indefinite period. However, when the oldest minor becomes of legal age, currently 18 yrs. old, the subsidy will be transferred back to that original family member and the adult brought into the unit will no longer receive the subsidy.

A reduction in family size will require a reduction in the Voucher size and a reduction in the payment standard.

## Chapter 10

### LEASE AND TENANCY LEASE ADDENDUM CONTRACT EXECUTION

#### INTRODUCTION [24 CFR 982.305 (a)]

The Authority issues Housing Choice Vouchers (“Voucher”) to qualified applicant families. After families are issued a Voucher, they may search for an apartment in the private market anywhere within the jurisdiction of the Authority or outside of the Authority’s jurisdiction if they qualify for portability. The family must find an eligible unit under the program’s rules, with a landlord/owner who is qualified to enter into a Housing Assistance Payments (“HAP”) Contract with the Authority. The HAP, issued by the Authority, subsidizes the balance of the rent directly to the landlord/owner. As a general rule, program participants do not pay more than thirty percent (30%) of their monthly adjusted income towards rent and utilities.

Further, except in the case of an owner-occupied house containing not more than two (2) dwelling unit, a landlord/owner may not refuse to rent or lease any house or apartment to another person solely because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the house or apartment, such as Section 8 Rental Assistance. N.J.S.A. 2A:42-100. This means that a landlord/owner may not refuse to rent or lease any house or apartment to a program participant who has received a voucher, while already residing in the unit, or who is seeking to rent from a landlord/owner for the first time. Moreover, a landlord/owner cannot refuse to accept rent subsidy payments (HAP) on behalf of that tenant, by not signing the necessary documents to effectuate the tenant’s ability to obtain the rent subsidy, and then seek to evict the Section 8 tenant for non-payment of rent. Franklin Towner One, L.L. C. V. N. M., 157 N.J. 602 (1999)

Finally, this chapter defines the types of eligible housing, the Authority’s policies pertaining to initial inspections, lease requirements, owner disapproval and the processing of the Tenancy Lease Addendum.

#### A. LEASE AND TENANCY LEASE ADDENDUM

A copy of the proposed Lease and Tenancy Lease Addendum must be submitted by the family during the term of the voucher. The Authority will not permit the family to submit more than one Tenancy Lease Addition at a time. The lease may be executed up to sixty (60) days prior to contract execution but cannot be executed without approval of the Authority. The Authority will not permit the family to submit more than one unit to be inspected at a time. The Authority will review the documents to determine whether or not they are approvable. **The Tenant is responsible for any required security deposit.**

#### **The Request will be approved if:**

- The unit is an eligible type of housing under HUD regulations;
- The unit meets HUD's Housing Quality Standards (and any additional criteria as identified in this Administrative Plan);
- The rent is reasonable and the family share is within 40% of the family’s adjusted

income, which is the allowable maximum family share at initial occupancy, and if the rent is within the Payment Standard;

- The security deposit amount is approvable;
- The proposed lease complies with HUD and the Authority's requirements State and Local Law; and
- The owner is approvable and there are no conflicts of interest.

### **Disapproval of Tenancy Approval**

If the Authority determines that the request cannot be approved for any reason, the landlord and the family will be notified in writing. The Authority will instruct the owner and family of the steps that are necessary to approve the request. The owner will be given thirty (30) calendar days to submit an approvable Request for Tenancy Approval ("RFTA") from the date of disapproval. If, for any reason, a RFTA is not approved, the Authority will furnish another RFTA form to the family along with the Notice of Disapproval so that the family can continue to search for eligible housing.

The time limit on the Voucher will be suspended while the Lease and Tenancy Lease Addendum are being processed so long as the owner and tenant do not cause delays in the processing.

### **B. ELIGIBLE TYPES OF HOUSING [24 CFR 982.353, 982.54(d)(15)]**

The Authority will approve any of the following types of housing in the Voucher Program:

- **All structure types** can be utilized.
- **Manufactured homes** where the tenant leases the mobile home and/or the pad.
- **Independent Group Residences:** A state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. A group residency consists of bedrooms for residents, 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 residency including assisted and unassisted residents and any live-in aides.
- **Congregate facilities (only the shelter rent is assisted):** Intended for use by elderly persons or persons with disabilities. A congregate 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.
- **Single Room Occupancy (SRO):** A unit that 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.

- **Shared Housing:** is a single housing unit occupied by an assisted family and another resident or residents. Per 24 CFR § 982.615 through 24 CFR § 982.618, the shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family. The unit may be a house or an apartment. There is a separate HAP contract and lease for each assisted family. Shared housing can be run by a private company in for-profit co-living (such as a boarding house, single bedroom with common living room/kitchen/dining room). It can consist of for-profit shared housing matching (such as roommates or single-family homes) and online sites that charge a fee for their matching services, or offered by a non-profit agency with matching services.
- **Units owned (but not subsidized) by the Authority** (following HUD - prescribed requirements).
- **Assisted living facilities**, including residential care facilities and adult care facilities, are eligible housing type for the Voucher assistance. All Housing Choice Voucher Program rules apply to assisted living facilities (residential care facilities, adult care facilities, congregate care facilities, group homes). The cost of meals and services are not included in the rent. The rent is based on unit size. The admission agreement from the assisted living facility is addendum to the Voucher tenancy addendum.

Families may not lease properties owned by relatives, such as spouse, parent, stepparent, child, stepchild, grandparent, grandchild, sister or brother, stepsister, stepbrother, unless approving the unit would provide reasonable accommodation for a family with disabilities. This is decided on a case by case basis and pending appropriate medical documentation.

The Authority may not permit a Voucher holder to lease a unit which is receiving Project-Based Section 8 assistance or any duplicative rental subsidies.

*The Authority will also not approve:*

- A unit if the owner is the parent, child, grandparent, grandchild, sister, or brother or any member of the family, unless the Authority determines that approving the unit would provide reasonable accommodations for a family member who is a person with disabilities.
- A unit occupied by the owner or by any person with an interest in the unit, other than manufactured homes described above.
- Nursing homes or other institutions that provide care.
- School dormitories and institutional housing.
- Any other types of housing prohibited by HUD.

### C. **LEASE REVIEW**

The Authority will review the lease, particularly noting the approvability of optional charges and compliance with regulations and State/local law. Responsibility for utilities, appliances and optional services must correspond to those provided on the on the

information form regarding a new unit to be subsidized.

Owners may either submit their own lease or permit the Authority to furnish the lease. In cases where the owner's lease is used, the HUD Tenancy Lease addendum must be attached and executed. The lease form must be in the standard form used in the locality by the owner. The lease must contain terms that are consistent with State and local law, and that apply generally to unassisted tenants in the same property. The Housing Assistance Payment ("HAP") contract and the lease must have the HUD Tenancy Lease Addendum. At a minimum, the Lease must include the names of the tenant and owner, the lease term, the monthly rent to the owner, and the utilities/appliances to be furnished by the owner and by the tenant. The Authority must review and approve the owner's lease prior to the tenant signing the lease and before entering into a HAP contract. Additionally, the Authority must review and approve any lease revisions.

**Separate Agreements:** Separate agreements are not necessarily illegal side agreements. Families and owners will be advised of the prohibition of illegal side payments for additional rent, or for items normally included in the rent of unassisted families, or for items not shown on the approved lease.

Owners and families may execute separate agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease if the agreement is in writing and approved by the Authority.

Any appliances, services or other items which are routinely provided to unassisted families as part of the lease (such as air conditioning, dishwasher or garage) or are permanently installed in the unit, cannot be put under separate agreement and must be included in the lease. For there to be a separate agreement, the family must have the option of not utilizing the service, appliance or other item.

The Authority is not liable for unpaid charges for items covered by separate agreements and nonpayment of these agreements cannot be cause for eviction.

If the family and owner have come to a written agreement on the amount of allowable charges for a specific item, so long as those charges are reasonable and not a substitute for higher rent, they will be allowed. All agreements for special items or services must be attached to the lease approved by the Authority. If agreements are entered into at a later date, they must be approved by the Authority and attached to the lease.

The Authority will not approve separate agreements for modifications to the unit for persons with disabilities. The modifications are usually within the dwelling and are critical to the use of the dwelling. If the owner makes modifications to the unit, the costs should be recovered through the rent collected, not by having the tenant pay for the modifications. Exception would be considered if the modifications are such that they most likely would be removed if the tenant moved out.

#### **D. INITIAL INSPECTIONS**

See Chapter 11, "Housing Quality Standards and Inspections."

**E. RENT LIMITATIONS**

*Exception Rents will be utilized to:*

- Expand housing opportunities for families to move from poverty-impacted areas.
- Make accessible units available to persons with disabilities.
- Increase the housing choices available to low-income families.

Rent reasonableness will still be used as a measure of whether the rent is approvable. For the Voucher program, the Authority will make a determination as to the reasonableness of the proposed rent in relation to comparable units available for lease on the private unassisted market, and the rent charged by the owner for a comparable assisted or unassisted unit in the building or premises.

**F. MAXIMUM INITIAL RENT BURDEN**

See Chapter 7, Part B

**G. INFORMATION TO OWNERS**

The Authority is required to provide prospective owners with the address of the applicant and the names and addresses of the current and previous landlord, if known. The Authority will make an exception to this requirement if the family's whereabouts must be protected due to domestic abuse or witness protection. The Authority will inform owners that it is the responsibility of the landlord to determine the suitability of prospective tenants. Owners will be encouraged to screen applicants for rent payment history, eviction history, damage to units, and other factors related to the family's suitability as a tenant.

- The Authority will provide documented information, only if known, regarding name and addresses of the past previous landlords.

Upon written request from a prospective landlord, the Authority will provide any of the following information regarding a family's tenancy history during the past three years based on *documentation in its possession* relating to:

- Eviction history.
- Damage to rental units.
- Other aspects of tenancy history; including complaints from neighbors or landlords.

The information will be provided in writing. Only the Executive Director and the Director of the Housing Choice Voucher Program may provide this information. The Authority's policy on providing information to owners is included in the briefing packet and will apply uniformly to all families and owners.

**H. CHANGE IN TOTAL TENANT PAYMENT (TTP) PRIOR TO HAP EFFECTIVE DATE**

When the family reports changes in factors that will affect the Total Tenant Payment (TTP) prior to the effective date of the HAP contract, the information will be verified and the TTP will be recalculated.



**I. CONTRACT EXECUTION PROCESS [24 CFR 982.305(c)]**

The Authority prepares the Housing Assistance Contract for execution. The family and the owner will execute the Lease agreement, Tenancy Lease Addendum and the owner and the Authority will execute the HAP Contract. Copies of the documents will be furnished to the parties who signed the respective documents. The Authority will return the original copy of the signed documents.

The Authority makes every effort to execute the HAP Contract before the commencement of the lease term. The HAP Contract may not be executed more than sixty- (60) days after commencement of the lease term and no payments will be made until the contract is executed. Only the Executive Director, the Assistant Executive Director or the Housing Choice Voucher Director is authorized to execute a contract on behalf of the Authority.

Owners must provide the current address of their residence (not a Post Office box). If families lease properties owned by relatives, the owner's current address will be compared to the subsidized unit's address. Each owner must provide the following information to the Authority:

- Name/Name of Corp., Names of all parties;
- Certificate of Formation
- Copy of the current insurance policy.
- Proof of paid residential taxes, paid water and sewerage.

Owners must provide an Employer Identification Number or Social Security Number, (W-9 form). Owners must also submit proof of ownership of the property, such as a Grant Deed or Tax Bill, and a copy of the Management Agreement, if the property is managed by an insurance management agent. The owner must provide a business or home telephone number.

**J. CHANGE IN OWNERSHIP**

A change in ownership does require execution of a new contract. The contract must be accompanied by a copy of the escrow statement or other document showing the transfer of title and the Employee Identification Number or Social Security number of the new owner, (W-9 form). Please note, the Authority must review the proof of ownership i.e. copy of deed. The Authority must receive a written request by the initial owner in order to change the HAP payee and/or the address to which payment is to be sent.

**K. OWNER RESPONSIBILITIES [24 CFR 982.452]**

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Complying with 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 BHA information required under the HAP contract
- Collecting the security deposit, the tenant rent, and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the lease
- Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]Complying with the Violence against Women Act (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); 24 CFR 982.452(b)(1); and FR Notice 1/4/23

## Chapter 11

### HOUSING QUALITY STANDARDS AND INSPECTIONS

#### **INTRODUCTION**

The Authority adheres to Housing Quality Standards (HQS) as established in 24 CFR 982.401 to perform all required inspections. Interpretative guidance for HQS acceptability criteria is taken from Form HUD 52580-A dated 9/00 and the HUD Housing Inspection Manual. Housing Quality Standards (HQS) are the HUD minimum quality standards for tenant-based programs. HQS standards are required both at initial occupancy and during the term of the lease. HQS standards apply to the building and premises, as well as the unit, and can be conducted via remote video inspection techniques.

Newly leased units must pass the HQS inspection before the beginning date of the assisted lease and the HAP Contract. The Authority will inspect each unit under Contract at least annually. The Authority will also perform a quality control inspection of at least five percent (5%) of all units under Contract annually to maintain the Authority's required standards and to ensure consistency.

HQS Standards may be enhanced by the Authority using applicable safety-related Federal, State, and local regulations provided that by doing so, the Authority does not overly restrict the number of units available for lease under the program. The use of the term "HQS" in this Administrative Plan refers to the combination of both HUD and the Authority requirements. This Chapter describes the Authority's procedures for performing HQS and other types of inspections, and standards for the timeliness of repairs. It also explains the responsibilities of the owner and family, and the consequences of non-compliance with HQS requirements, including lead based paint requirements, for both families and owners.

Quality Control inspections will be performed by the Executive Director or designee on a sample number of units during the Authority's fiscal year. The sample shall be based on the HUD SEMAP requirement for HQS Quality Control inspections. The purpose of Quality Control inspections is to ensure that each inspector is conducting accurate and complete inspections and to ensure consistency in the application of the HQS. Completed HQS inspections included in the sample will be no older than 90 days at the time of the re-inspection. The sample will represent a cross section of neighborhoods where Program units are located and inspections completed by all HQS Inspectors. The sample will also include a cross-section of initial and annual inspections.

#### **A. QUALITY CONTROL**

The Authority has adopted local requirements of acceptability in addition to those mandated by HUD Regulations. All units must meet the minimum standards set forth in the Bayonne Building/Housing Code, Uniform Construction Code, and Applicable State Regulations. In cases of inconsistency between the Code and these HQS, the stricter standard shall prevail.

Efforts will be made at all times to encourage owners to provide housing above HQS minimum standards. HQS inspections may use cameras to document unit conditions.

Staff conducting the HQS inspections is trained on the application of the Authority's HQS inspection standards and procedures and receive the same guidance as other Authority inspectors on inspection policies and procedures. In addition to monitoring SEMAP compliance, Quality Control inspections are used to obtain information regarding the quality of work performed by each inspector. This information is used to determine the need for further training, clarification, or guidance on specific HQS topics.

For SEMAP purposes, an HQS deficiency found at the time of the inspection represents a "failed" Quality Control inspection. The Authority will take into account whether the failed item occurred after the previous inspector was on site. Often the tenant can describe when the deficiency occurred or there will be other identifying conditions useful in making this determination.

The Authority will maintain a Quality Control tracking system for each SEMAP year. This log contains the following information: unit address, location of unit, date of original inspection and name of inspector, date of quality control inspection and name of inspector and results of the quality control inspection.

If the utilities are not in service at the time of inspection, the Inspector will notify the tenant or owner (whoever is responsible for the utilities according to the RTA) to have the utilities turned on. The Inspector must return to certify that the utilities are on. The stove must be present when the unit is inspected.

There are five types of inspections the Authority will perform:

1. Initial/Move-in
2. Annual
3. Special/Complaint
4. Move-Out/Vacate
5. Quality Control

Inspectors conducting unit inspections must note on the inspection checklist all items receiving a rating of pass, fail or incomplete. The inspector will make clear notes regarding the nature of all failed or incomplete items. For the unit to receive a pass rating, no failed or incomplete items can be noted on the inspection checklist.

Improvements that have occurred since the previous inspection, additional amenities or services, and changes in type of or responsibility for utilities should be noted and reported to the appropriate Authority staff. The inspector will also record improvements or items that should be brought to the attention of the owner or tenant that are not HQS deficiencies.

**Deadline for Initial Inspection:** BHA's with 1250 or fewer units must inspect within fifteen

(15) calendar days of receiving the request for inspection. The clock is stopped for any period during which the unit is not ready for inspection.

**Initial/Move-In Inspections:** The Initial/Move-In Inspection is conducted to: determine if the unit and property meet HQS, as defined in this Plan; document the current condition of the unit to assist in future evaluations to determine whether the condition of the unit exceeds normal wear and tear; and, document the information to be used for determination of rent-reasonableness.

The Authority will conduct the initial inspection within a reasonable time after receiving a RTA from the family. Every effort will be made to conduct the inspection within 15 calendar days of receiving the RTA. Time is suspended for any period during which the unit is not ready for inspection.

If the unit fails the initial HQS inspection, the family and owner will be advised to notify the Authority once repairs are completed. The owner will be given up to 30 days to correct the deficiencies identified. The owner will not be issued a HAP payment for the period exceeding 30 days that the repairs have not been completed. It is responsibility of the owner and the Section 8 participant to notify the Authority when repairs have been completed so that the unit can be re-inspected. The owner will be allowed up to two re-inspections within the 30 day period for repair work to be completed. If the time period given by the Inspector to correct the repairs has elapsed, or the maximum number of failed re-inspections has occurred, the family must select another unit.

## **B. ANNUAL INSPECTIONS**

The Authority conducts an inspection in accordance with Housing Quality Standards at least annually, within sixty- (60) days prior to the anniversary month of the contract. Special (“HQS”) inspections may be scheduled more frequently. Initial inspection must be conducted within fifteen (15) calendar days after receipt of an inspection request from the family and/or owner.

HQS deficiencies which cause a unit to fail must be corrected by the landlord unless it is a fail for which the tenant is responsible. The family is only responsible for breaches of HQS, which are caused by:

- Non-payment of utilities paid by the family,
- Not providing, or failing to maintain, appliances not provided by the owner, and
- Damages to the unit or premises caused by a household member or guest beyond normal wear and tear.

The family must allow the Authority to inspect the unit at reasonable times with reasonable notice [24 CFR 982.51]. The Authority will notify the family in writing at least seven (7) days prior to the inspection.

**Inspection:** The family is notified of the date and time of the inspection appointment by mail. If the family is unable to be present, they must reschedule the appointment so that the inspection is completed within ten (10) working days. If the family does not contact the Authority to reschedule the inspection, or if the family misses one (1) inspection appointment, the Authority will consider the family to have violated a Family Obligation and their assistance will be terminated in accordance with the termination procedures in the Plan.

**Re-inspection:** The family is mailed a notice of the inspection appointment by mail. If the family is not at home for the re-inspection appointment, a card will be left at the unit and another appointment is automatically scheduled. The family is also notified that it is a

Family Obligation to allow the Authority to inspect the unit. If the family was responsible for a breach of HQS identified in Chapter 15, "Denial or Termination of Assistance," they will be advised of their responsibility to correct the deficiency.

**All Inspections:** The family will be mailed a notice that the inspection is due and asked to call to schedule an appointment within ten (10) working days. If they do not call, they will be sent a second notice. If they still fail to schedule the appointment, a notice of termination of assistance will be sent. If the family still does not contact the Authority within the time period allowed to request a hearing, assistance will be terminated.

**Move-out inspections:** The Resident Head of Household must give the Authority at least 30 days written notice prior to the first of the month if he/she intends to move from the unit. Subsequently, the Asset Manager will schedule a preliminary inspection to determine if charges are due for damages. A Resident Household member can participate in this inspection unless the Resident Household vacates without notice to the Authority. The final move-out inspection will take place within three working days after move-out. The Authority will furnish the Resident with a statement of any charges to be made in accordance with the Authority posted schedule of charges and will itemize any applicable deductions from the security deposit.

**Time Standards for Repairs:**

1. Emergency items which endanger the family's health or safety, must be corrected within twenty four - (24) hours of notification.
2. For non-emergency items, repairs must be made within thirty- (30) days.
3. For major repairs, the Executive Director may approve an extension beyond thirty (30) days.

**C. EMERGENCY REPAIR ITEMS [24 CFR 982.401 (a)]**

The following items are considered of an emergency nature and must be corrected by the owner or tenant (whoever is responsible) within twenty-four (24) hours of notice by the Inspector Items considered to be of an emergency nature include, but are not limited to, the following:

- Lack of security for the unit
- Waterlogged ceiling in imminent danger of falling
- Major plumbing leaks or flooding
- Natural gas leak or fumes
- Electrical problem, which could result in shock or fire
- No heat: determination in accordance with local code
- Utilities not in service
- No running hot water
- Broken glass where someone could be injured
- Obstacle which prevents tenant's entrance or exit
- Lack of functioning toilet

The Authority may give a short extension twenty-four (24 hours) whenever the responsible party cannot be notified or it is impossible to effect the repair within the twenty-four (24-

hour) period.

In those cases where there is leaking gas or potential of fire or other threat to public safety, and the responsible party cannot be notified or it is impossible to effect the repair, proper authorities will be notified by the Authority. If the emergency repair item(s) are not corrected in the time period required by the Authority, and the owner is responsible, the housing assistance payment will be abated and the HAP contract will be terminated.

If the emergency repair item(s) are not corrected in the time period required by the Authority, and it is an HQS breach, which is a family obligation, the Authority will terminate the assistance to the family and the owner's payment will not be abated for the month following the breach of HQS.

**D. CONSEQUENCES IF OWNER IS RESPONSIBLE (NON-EMERGENCY ITEMS)**

When it has been determined that a unit on the program fails to meet Housing Quality Standards, and the owner is responsible for completing the necessary repair(s) in the time period specified by the Authority, the assistance payment to the owner will be abated.

**Abatement:** If the unit fails the initial HQS inspection, the owner will be given up to 30 days to correct the deficiencies identified. A Notice of Abatement will be sent to the owner, and the abatement will be effective from the day after the date of the failed inspection. The notice is generally for thirty- (30) days, depending on the nature of the repair(s) needed.

The Authority will inspect abated units within five (5) working days of the owner's notification that the work has been completed. The family will be notified of the re-inspection date and requested to inform the owner. The abatement will remain in effect until repairs are completed or the contract is terminated.

If the owner makes repairs during the abatement period, payment will resume on the day the unit passes inspection. No retroactive payments will be made to the owner for the period of time while the Contract was abated and the unit did not comply with HQS. If the time period given by the Inspector to correct the repairs has elapsed and the unit continues to be in a failed condition, the family must select another unit.

**Reduction of Payments:** The Authority will reduce payments and/or grant an extension in lieu of abatement in the following cases:

- The owner has a good history of HQS compliance.
- The failed items are minor in nature.
- There is an unavoidable delay in completing repairs due to difficulties in obtaining parts or contracting for services.
- The owner makes a good faith effort to make the repairs.
- The repairs are expensive (such as exterior painting or roof repair) and the owner needs time to obtain the funds.
- The repairs must be delayed due to climate conditions.

The extension will be made for a period of time not to exceed thirty- (30) days. At the end of that time, if the work is not completed, the Authority will begin the abatement of

assistance.

**Termination of Contract:** If the owner is responsible for repairs, and fails to correct all the deficiencies cited prior to the end of the abatement period, the owner will be sent a reminder notice. If the owner fails to act within five (5) working days, termination proceedings will begin. If repairs are completed before the effective termination date, the termination will be rescinded by the Authority if the tenant chooses to remain in the unit.

**E. DETERMINATION OF RESPONSIBILITY [24 CFR 982.404, 982.54(d)(14)]**

Certain deficiencies are considered the responsibility of the family, such as:

- Tenant-paid utilities not in service.
- Failure to provide or maintain family-supplied appliances and
- Damages 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 be charged against the tenant's security deposit under state law or court practice and is defined in Chapter seventeen (18), "Claims, Move-Out and Close-Out Inspections."

The owner is responsible for all other HQS violations. The owner is responsible for vermin infestation even if caused by the family's living habits. However, if such infestation is serious and repeated, it may be considered a lease violation and the owner may evict for serious or repeated violation of the lease. The Authority may terminate the family's assistance on that basis. The inspector will make a determination of owner or family responsibility during the inspection. The owner or tenant may appeal this determination through an informal hearing.

If the family is responsible but the owner carries out the repairs, the owner will be encouraged to bill the family for the cost of the repairs and the family's file will be noted.

**F. CONSEQUENCES IF FAMILY IS RESPONSIBLE**

If non-emergency violations of HQS are determined to be the responsibility of the family, the Authority will require the family make any repair(s) or corrections within thirty (30) days. If the repair(s) or correction(s) are not made in this time period, the Authority will terminate assistance to the family. Extensions in these cases must be approved by the Executive Director. The owner's rent will not be abated for items which are the family's responsibility. If the tenant is responsible and corrections are not made, the HAP Contract will terminate when assistance is terminated.

**G. SPECIAL REQUIREMENTS FOR LEAD-BASED PAINT IDENTIFICATION AND REDUCTION**

**Note:** These requirements only apply to dwellings built before January 1, 1978 and occupied or to be occupied by assisted families with one or more children under the age of six years; including pregnant women.

**Disclosure Requirements:** Owners or owner agents must disclose any knowledge of lead-based paint or lead-based paint hazards to prospective residents prior to lease execution.



Disclosure requirements apply to all dwellings built before 1978 regardless of ages of children. The Authority will keep a copy of the signed disclosure notice in the tenant file. The owner must also provide the prospective family with a copy of the signed disclosure notice in the tenant file, as well as with a copy of Protect Your Family from Lead in Your Home or appropriate EPA-approved document.

**Stabilization of Deteriorated Surfaces:** If an Authority HQS Inspector identifies deteriorated paint surfaces during a unit inspection, the owner must perform stabilization of the surface in accordance with federal requirements. The Authority will notify the owner of this requirement. Stabilization must occur before commencement of an assisted tenancy or, for a currently assisted unit, within 30 days of notification to the owner. If the amount of deteriorated paint is below the HUD de minimus level, the owner must correct the deficiency by:

- Performing paint stabilization; and
- Notifying the occupants of any paint stabilization activities within 15 calendar days of completion.

If the amount of deteriorated paint is above the HUD de minimus level, the following actions must be taken to correct the deficiency:

- Arrange for and complete stabilization activities, using trained staff and employing acceptable methods for preparing the surface to be treated;
- Dry sanding and dry scraping is permitted only for areas within 1 foot of an electrical outlet or when the defective paint spots are no larger than 2 square feet in any interior room or 20 square feet on an exterior surface.
- Protect the occupants and their belongings from contamination.
- Arrange and pay for clearance activities, which must be performed by licensed or certified professionals who have received EPA or state-approved training. Owners are responsible for arranging and paying for lead-based paint clearance activities performed by a licensed or certified professional who has received EPA or state-approved training.
- Notify the occupants within 15 calendar days of the stabilization activity and provide the results of the clearance examination.
- Execute and submit to the Authority the Lead Based Paint Owner's Certification.

An owner's failure to comply with Authority stabilization requirements, regardless of the amount of deteriorated surface, will result in disapproval of tenancy, abatement of payment to the owner, or termination of the HAP Contract.

#### **H. INITIAL HQS INSPECTION**

The Initial Inspection must be conducted within fifteen (15) calendar days after receipt of an inspection request from the family and/or owner to:

- Determine if the unit and property meet the HQS defined in this Plan.

- Document the current condition of the unit as a basis to evaluate whether the future condition of the unit exceeds normal wear and tear.
- Document the information to be used for determination of rent-reasonableness.

If the unit fails the initial Housing Quality Standards inspection, the owner will be advised to notify the Authority once repairs are completed. On an initial inspection, the owner will be given up to thirty (30) days to correct the items noted as Fail, at the Inspector's discretion, depending on the amount and complexity of work to be done. The owner will be allowed up to two (2) re-inspections for repair work to be completed. If the time period given by the Inspector to correct the repairs has elapsed, or the maximum number of failed re-inspections has occurred, the family must select another unit.

Units must pass the federally established Housing Quality Standards (“HQS”) or substitute local housing codes or codes adopted by the Authority: (A) cannot severely restrict housing choice; and (B) must meet or exceed the HQS (unless HUD approves a lower standard that does not adversely affect the health or safety of families, and will significantly increase affordable housing access and expand housing opportunities).

#### **I. ANNUAL HQS INSPECTION**

The Authority will conduct an inspection using the Housing Quality Standards and other standards approved in this Administrative Plan at least annually, prior to the anniversary month of the contract. Rent increase requests in the voucher program will not be approved if the unit is in a failed condition.

#### **J. SPECIAL/COMPLAINT INSPECTIONS**

If at any time the family or owner notifies the Authority that the unit does not meet HQS Standards, the Authority will conduct an inspection. The Authority may also conduct a special inspection based on information from third (3<sup>rd</sup>) parties such as neighbors or public officials.

The Authority will inspect only the items, which were reported, but if the Inspector notices additional deficiencies that would cause the unit to fail HQS, the responsible party will be required to make the necessary repairs.

#### **K. QUALITY CONTROL INSPECTIONS**

Quality Control inspections will be performed annually by the Executive Director or designee of the Executive Director on five percent (5%) of the units. The purpose of Quality Control inspections is to ascertain that the inspector is conducting accurate and complete inspections.

## Chapter 12

### OWNER RENTS, RENT REASONABLENESS, AND PAYMENT STANDARDS

#### INTRODUCTION

The Authority is responsible to ensure that the rents charged by owners are reasonable based upon objective comparables in the rental market. The Authority will not approve the lease or execute a payments contract until it has determined that the unit meets the minimum HQS and that the rent is reasonable. When the Authority has determined that the unit meets the minimum HQS, that the lease is approvable, and that the rent is reasonable, it will make timely payments to the owner and notify the owner of the procedures for rent adjustments in the Voucher program. The Authority will determine rent reasonableness at initial lease-up, before any increases in rent to the owner and at other times as described in this section. This Chapter explains the Authority's procedures for determination of rent-reasonableness, payments to owners, adjustments to the Payment Standards, and rent adjustments.

#### **A. OWNER PAYMENT IN THE VOUCHER PROGRAM**

The maximum subsidy for each family is determined by the Payment Standard for the Voucher size issued to the family, less thirty (30%) of the family's Monthly Adjusted Income. The actual subsidy level could be less if the family is required to pay the Minimum Total Tenant Payment ten percent (10% of the family's Monthly Income). The total Housing Assistance Payment (HAP) may not exceed the rent charged by the owner. In other words, the HAP Payment is the lower of the following:

- Payment Standard minus the Total Tenant Payment; or
- The gross rent minus the Total Tenant Payment

The Voucher size issued to the family is based on the Authority's Subsidy Standards. The Payment Standard for the family is based on the lesser of the Payment Standard for the Voucher size issued and the Payment Standard for the unit selected. The Housing Assistance Payment to the owner is the lesser of the subsidy described above or the rent charged by the owner.

#### **B. MAKING PAYMENTS TO OWNERS**

Once the HAP Contract is executed, the Authority begins processing payments to the landlord. The effective date and the amount of the Authority payment is communicated in writing with the executed HAP contract to the landlord and the tenant. A HAP Register will be used as a basis for monitoring the accuracy and timeliness of payments. Changes are made automatically to the HAP Register for the following month. In some cases, HAP payments are made via Direct Deposit.

Checks are disbursed by Section 8 department to the owner each month. Checks may be picked up by owner at the Authority, if the Authority has caused the delay in the issuing of the HAP payment. Checks will only be disbursed by verified mail on the first five (5) working days of the month (unless the owner/landlord returned the contracts beyond that date, then a check may be issued to the owner after the first five (5) working days). Please

note, this is the same for direct deposit payments. Checks that are not received will not be replaced until a written request has been received from the payee and a stop payment has been put on the check, based upon the bank statement of the following month in which the HAP was issued.

**BHA Penalties for Late HAP Check Payments to the Landlord/Owner:** Any late payment penalties may only be imposed in accordance with generally accepted practices in the local housing market, governing penalties for late payment of rent by a tenant. The Authority may be required to pay a late fee to an owner if the HAP is not paid by the fifteenth (15<sup>th</sup>) calendar day of the month. The late payment fee penalty is twenty-five dollars(\$25.00). A late payment fee may only be paid from the Authority's Administrative fee income (including available amounts in the Authority's Administrative fee reserve).

The Authority is not obligated to pay any late payment fee if HUD determines that the late payment is due to factors beyond the control of the Authority (e.g., late receipt of the Section 8 funds from the Treasury department). Also, if the Authority deems the HAP payment is received by the owner e.g., upon mailing (by verified mail each month) by the Authority or actual receipt by the owner.

C. **RENT REASONABLENESS DETERMINATIONS [24 CFR 982.507]**

**Timing:** A unit will not be approved until it is determined that the requested rent by the owner/agent is a reasonable rent. The Authority will also determine the reasonable rent before approving any increase in the rent or if there is a ten percent (10%) decrease in the published FMR sixty (60) days before the contract anniversary as compared with the FMR in effect one year before the contract anniversary, or if directed by HUD. Rent reasonableness must also be determined before approving any rent increase to the owner. The agency may elect to re- determine reasonable rent at any other time.

**Statement of Compliance with Reasonable Rent Regulations:** The Authority utilizes the affordablehousing.com website which is utilized to assist staff to conduct reasonable rent analysis for units to be assisted. The [affordablehousing.com](https://www.affordablehousing.com) website was designed to correct long-standing misconceptions and problems about reasonable rent analysis. For example, other systems allow the Authority to select the comparable units, allowing for possible favoritism, subjectivity and Fair Housing issues. [Affordablehousing.com](https://www.affordablehousing.com) automatically selects the best comparable units in the database using consistent and objective methods. Thus, the Authority and U. S. Department of Housing and Urban Development (HUD) are protected from fraud, waste, and mismanagement.

**Compliance with 24 CFR Section 982.507 Rent to Owner: Reasonable Rent and 24 CFR Section 985.3 (b) Reasonable Rent:** The regulations do not require a specific method to be utilized. The only requirements for comparability at 24 CFR 982.507 (b) is for the Authority to utilize unassisted units as comparable units and to consider all nine characteristics for each determination. Therefore, the reasonable rent system uses only unassisted units for comparable units. It also considers the following characteristics for each determination:

- Location

- Quality
- Size (by number of bedrooms, overall size and number of bathrooms)
- Unit type
- Age of the contract unit
- Amenities
- Housing Services
- Maintenance
- Utilities to be provided by the owner

**Compliance with Fair Housing Regulations:** The Authority will ensure the reasonable rent determination process is not utilized to violate anyone’s Fair Housing rights. To accommodate a request for a reasonable accommodation, the Authority recognizes the Fair Housing regulations are more strict than the reasonable rent regulations. Therefore, the Fair Housing regulations will take precedence. A participant may make a request for a reasonable accommodation when the market analysis report shows the rent is not reasonable or when the rent is so high the participant would pay more than 40% of their monthly adjusted income toward the rent (24 CFR Part 982.508 – Maximum Family Share at Initial Occupancy).

When the request for a reasonable accommodation concerns the 40% of the Monthly Adjusted Income (MAI) rule, the Authority may consider the internal administrative remedy of using a Payment Standard of 120% of the Fair Market Rent for the specific unit and participant in question (24 CFR 982.503 b. (1.) (v.)). The Agency does not need HUD approval for this action. The higher Payment Standard may bring the tenant’s rent share to under 40% of MAI thus allowing the Authority to approve the requested rent.

External administrative remedies involve efforts by the Authority and HUD. If the requested gross rent for a unit at initial occupancy exceeds the Payment Standard, and the tenant would pay more than 40% of their monthly adjusted income for rent, the Authority may request a waiver from HUD for the regulation at 24 CFR Part 982.508 – Maximum Family Share at Initial Occupancy. The waiver request would be to allow the family to pay more than 40% of their monthly adjusted income for rent.

As needed, another external administrative remedy the Authority will consider is to request a waiver from HUD from the regulation at 24 CFR Part 982.507 Rent to Owner’s Reasonable Rent. This waiver request would be to approve the rent for the unit in question even though it is not reasonable. (This section subject to change if cited regulations are changed or updated.)

#### **D. PAYMENT STANDARDS FOR THE VOUCHER PROGRAM**

The Payment Standard is used to calculate the Housing Assistance Payment (HAP) for a family. The Payment Standard is initially set by the Authority at the Fair Market Rent in effect at the time the Annual Contributions Contract for the first increment of Voucher funding is approved by HUD. The Payment Standard is used to determine the maximum subsidy which can be paid by the Authority on behalf of the family. The Authority may set payment standards between ninety percent (90%) and one hundred ten percent (110%) of the Fair Market Rent (FMR). If higher or lower payment standards are needed, the

Authority will seek HUD approval of a payment standard above or below the FMR.

**E. ADJUSTMENTS TO PAYMENT STANDARDS**

Payment Standards may be adjusted to increase Housing Assistance Payments in order to keep families' rents affordable. The Authority will not raise the Payment Standards so high that the number of families that can be assisted under available funding is substantially reduced. Nor will the Authority raise Standards if the need is solely to make "high end" units available to Voucher holders.

The Authority will review the Payment Standard annually to determine whether an adjustment should be made for some or all unit sizes. The Payment Standard will be reviewed according to HUD's requirements and this policy and if an increase is warranted, the payment standard will be adjusted within ninety percent (90%) to one hundred ten percent (110%) of the current Fair Market Rent. In a volatile market, the Authority may review the Standards more frequently but will only adjust them annually.

**Payment Standard Amount and Schedule | "Designated SAFMR PHAs" (PIH Notice 2018-01):**

The BHA is in a designated SAFMR area (i.e., a metropolitan area where the use of SAFMRs is required). Effective October 1, 2024, as per the above notice, the Authority will establish payment standards based on the current SAFMR zip code in the Authority's jurisdiction. The Authority may use some or all of the measures below in making its determination whether an adjustment should be made to the Payment Standards.

**Financial Feasibility:** Before increasing the Payment Standard, the Authority may review the budget and the project reserve, to determine the impact projected subsidy increases would have on funding available for the program and number of families served. For this purpose, the Authority will compare the number of families who could be served under a higher Payment Standard with the number assisted under current Payment Standards. The Authority will document the analysis and findings to justify whether or not the Payment Standard was changed and provide such upon request.

**When the Payment Standard Increases:** the Payment Standard in place on the effective date of the HAP contract remains in place for the duration of the contract term unless the BHA increases or decreases its payment standards. If a Payment Standard is increased, the higher Payment Standard is first used in calculating the HAP at the effective date of the next regular annual reexamination.

**When the Payment Standard Decreases:** The Housing Opportunity Through Modernization Act of 2016 (HOTMA) amended the U.S. Housing Act of 1937 to provide that no BHA is required to reduce a family's payment standard based on a reduction in the FMR. Per the final rule amendment to 24 CFR § 982.505(c)(3), the Authority may adopt one of three policies if there is a decrease in the Payment Standard schedule during the term of a family's HAP contract.

**BHA Policy**

The Authority will apply the lower Payment Standard to calculate the family's HAP beginning at the effective date of the family's **second** regular annual reexamination following the decrease in the Payment Standard.

A family that will be affected by a payment standard reduction must receive notice. The Authority must provide such notice in writing 12 months before the effective date of the reduced Payment Standard amount.

**F. RENT INCREASE / ADJUSTMENTS [24 CFR 983.302]**

- 1) The PHA may not make any rent increase other than an increase in the rent to owner as determined pursuant to [§ 983.301](#). (Provisions for special adjustments of contract rent pursuant to [42 U.S.C. 1437f\(b\)\(2\)\(B\)](#) do not apply to the voucher program.)
- 2) The owner must request an increase in the rent to owner at the annual anniversary of the HAP contract by written notice to the PHA. The length of the required notice period of the owner request for a rent increase at the annual anniversary may be established by the PHA. The request must be submitted in the form and manner required by the PHA.
- 3) The PHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with the HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

**BHA Policy**

Owners may not request rent adjustments in the Voucher Program to be effective prior to the expiration of the first year of the lease. Owners must request an increase in writing within sixty (60) days to the annual anniversary of the HAP contract, or the Authority will not approve an annual adjustment for that year. If the Authority approves the increase, the owner must provide notice to the tenant as required by provisions of the lease.

Rent increases must pass the rent reasonableness test by the Authority unless the owner requests a Special Adjustment to be approved by HUD and the Authority to cover increases in property taxes, assessments, or utility rates.

**Disapproval of Requests for Adjustment:** If the Authority rejects the owner's request for rent adjustment as exceeding rent reasonableness and the owner rejects the Authority's determination, the owner may offer the tenant a new lease (after receiving the Authority's approval) with a sixty (60) day notice to the tenant. If the tenant refuses or the owner does not offer a new lease, the owner may institute court action to terminate tenancy for a business or economic reason in accordance with the lease after giving ninety (90) days notice to the Authority, HUD, and the family as required by law. The Authority will issue a new Voucher to the family.

After the tenant has begun searching for a new housing unit and/or after court action has been initiated, the owner may decide to accept the current lease. If the owner and tenant agree, the lease can continue. If the tenant accepts the offer of a new lease, a lease and Tenancy Lease Addendum must be submitted and the requested rent subjected to rent

reasonableness.

If a new lease is executed, a new Contract must also be executed. Owners may not request rent adjustments in the Voucher Program to be effective prior to the expiration of the first year of the lease. Rent adjustments are effective: With a sixty (60) day notice to the family and a copy to the Authority. The Authority will advise the family as to whether the rent is reasonable and shall approve or disapprove the rent increase.



## Chapter 13

### RECERTIFICATIONS

#### INTRODUCTION

The BHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and BHA policies concerning reexaminations are presented in three parts:

**Part I: Annual Reexaminations.** This part discusses the process for conducting annual reexaminations.

**Part II: Interim Reexaminations.** This part details the requirements for families to report changes in family income and composition between annual reexaminations.

**Part III: Non-Interim Reexamination Transaction.** This part describes transactions that do not entail changes to the family's adjusted income.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

#### PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

##### OVERVIEW

The BHA must conduct a reexamination of family income and composition at least annually. This includes 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. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

Unlike when performing an interim reexamination or at intake, at annual reexamination, the BHA must determine the income of the family for the previous 12-month period, except where the BHA uses a streamlined income determination. Income from assets, however, is always anticipated, irrespective of the income examination type [Notice PIH 2023-27]. PHAs also have the option of using a "safe harbor" income verification from another federal means-tested program to verify gross annual income. Chapter 7 contains the BHA's policies related to streamlined income determinations and the use of safe harbor income verifications.

##### A. SCHEDULING ANNUAL REEXAMINATIONS

The BHA must establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month period and may require reexaminations more frequently [HCV GB p. 12-1].

## BHA Policy

The BHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the BHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

*Anniversary date* is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

**Reexamination Notice to the Family:** The Authority will maintain a reexamination tracking system and the household will be notified by mail/email or other means of electronic communication (i.e. DocuSign) of the date for the submission of required forms for annual recertification at least ninety (90) days in advance of the anniversary date. If requested as an accommodation by a person with a disability, the Authority will provide the notice in an accessible format. The Authority will also mail the notice to a third party if requested as reasonable accommodation for a person with disabilities. These accommodations will be granted upon verification that they meet the need presented by the disability.

As part of the annual reexamination process, families are required to provide updated information to the BHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

Families are required to submit verification as part of the 90-day notice, the total household income, and other information requested along with the completed forms to the BHA.

**Documents Required From the Family:** In the notification letter to the family, the Authority will include instructions for the family to provide the following:

- Application for Continued Occupancy form with addendums;
- Documentation of income and assets for all family members;
- Documentation of any deductions/allowances;
- Personal Declaration Form completed by for all family members age 18 or older
- Birth Certificate/s for members added after initial lease-up;
- Social Security cards for members added after initial lease-up;
- Disposition of Assets form;
- Declaration of 214 Immigration Status for all household members (only if immigration status has changed);
- Supplement to Application for Federally Assisted Housing (Form HUD- 92006);
- HUD Notice PIH 2009-35;
- One Strike You're Out Policy;
- "What You Should Know About EIV" guide;
- Protect your Family from Lead in your Home Pamphlet;
- Resident Rights and Responsibilities Pamphlet;
- Window Guard Notice (if applicable);
- Minimum Rent Hardship Notice;

- Lease Violation Flyer;
- Smoke Free Addendum;
- Community Service Requirement.

**Failure to Respond to Notification to Recertify:** The written notification must state which family members are required to submit the documents required.

Any required documents or information that the family is unable to provide with the 90 day-notice time period, a 60-day notice will be sent to the family.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a 30- day notice of termination (See Chapter 15). The Authority will terminate assistance to the family and offer them an informal hearing.

**Persons with Disabilities:** Persons with disabilities, who are unable to come to the Authority's office will be granted an accommodation of conducting the interview at the person's home/by mail, upon verification that the accommodation requested meets the need presented by the disability.

**Verification of Information:** The Authority will obtain income reports through HUD's Enterprise Income Verification (EIV) system for annual and interim re-certification of program participants. These reports reflect all sources of income for the family (Social Security, wage income, unemployment benefits, etc) and are compared to income reported by the family. Verification of discrepancies are obtained and used in determining our payment of subsidy and recapture of the overpayment from the family. The Authority will follow the verification procedures and guidelines described in this Plan. Verifications for reexaminations must be less than sixty (60) days old.

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

### **Existing Tenant Search**

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

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

## BHA Policy

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

**Enterprise Income Verification (“EIV”) & You Brochure:** The EIV & You Brochure is provided to Participants and potential Participants to inform them about the EIV system, the data that is available about them, how the information will be used, and their responsibility as a Participant. A signed return receipt will be signed by the participant and kept in the Participant’s file that will indicate the Participant received the brochure concerning EIV.

### **CALCULATING ANNUAL INCOME AT ANNUAL REEXAMINATION [24 CFR 5.609(c)(2) and Notice PIH 2023-27]**

The BHA must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the BHA uses a streamlined income determination as indicated in Chapter 8 of this policy. The BHA 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 8 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 BHA policies and 24 CFR 5.657(c) or 960.257(b) must be considered.

Income from assets is always anticipated, irrespective of the income examination type.

A change in income may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. The BHA 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 7 for BHA policies on when the COLA is applied and Chapter 8 on streamlined determination of income for inflationary adjustments.

Notice PIH 2023-27 lists the following steps to calculate both earned and unearned income at annual reexamination.

**Step 1:** The BHA determines annual income for the previous 12-month period by reviewing the following information:

- The EIV Income Report pulled within 120 days of the effective date of the annual reexamination;
- The income reported on the most recent HUD-50058; and
- The amount of prior-year income reported by the family on the BHA's annual reexamination paperwork.

**Step 2:** The BHA takes into consideration any interim reexamination of family income completed since the last annual reexamination.

- If there was an interim reexamination performed, the BHA must use the annual income from the interim to determine the family's total annual income, provided there are no additional changes.
- If the BHA did not perform an interim or there have been changes since the last reexamination, the BHA moves to Step 3.

**Step 3:** If there were changes in annual income not processed by the BHA since the last reexamination, the BHA must use current income. The family will be required to report their income for the prior year and whether there have been permanent changes.

- If there are no reported changes to an income source, the BHA may use documentation of prior-year income to calculate the annual income. For example, the BHA may use the following documentation:
- EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- Current written third-party verification from the source verifying prior-year income that is dated within 120 days of receipt by the BHA, for example:
  - Year-end statements
  - Paycheck with year-to-date amounts
  - Tax forms (Form 1040, W2, 1099, etc.)
- If there are reported changes by the family or the BHA notes discrepancies between EIV and what the family reports, the BHA must follow the verification hierarchy (described in Chapter 8) to document and verify income. Chapter 8 provides detailed examples of how the BHA calculates income from different sources at annual reexamination using the above method.

## BHA 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 BHA policies in Chapter 8, the above is not applicable. However, where the family disagrees with the BHA or other agency's determination of income or the BHA has other reason to use third-party verification in these circumstances, then the above will apply.

## **EFFECTIVE DATES**

The BHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

### BHA Policy

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If 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 the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 19.

In general, a *decrease* in the family share of the rent that results from an annual 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 the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the BHA by the date specified, and this delay prevents the BHA from completing the reexamination as scheduled.

## **NOTIFICATION OF RESULTS OF RECERTIFICATIONS**

The HUD form 50058 will be completed and transmitted as required by HUD. The Notice of Rent Change is mailed to the owner and the participant. Signatures are not required by the Authority. If the family disagrees with the rent adjustment, they may request an informal hearing, in writing to the Authority. Staff will ensure that the letter goes out to the landlord and participant. A copy of the letter will be retained in the file

## **PART II: INTERIM REEXAMINATIONS [24 CFR 982.516; Notice PIH 2023-27]**

### **OVERVIEW**

Family circumstances may change between annual reexaminations. HUD and BHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the BHA must process interim reexaminations to reflect those changes.

A family may request an interim determination of family income or composition because of any changes since the last determination. The BHA must conduct any interim reexamination within a reasonable period of time after the family request or when the BHA becomes aware of a change in the family's adjusted income that must be processed in accordance with HUD regulations. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but the BHA generally should conduct the interim reexamination not longer than 30 days after the BHA becomes aware of changes in income.

Notice PIH 2023-27 changes the conditions under which interim reexaminations must be conducted, codifies when interim reexaminations should be processed and made effective, and requires related changes for annual reexaminations and streamlined income determinations. When the BHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income.

#### **A. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

##### **Reporting**

PHAs must require families to report household composition changes; however, PHAs determine the timeframe in which reporting happens [Notice PIH 2023-27]. The BHA must adopt policies prescribing when and under what conditions the family must report changes in income and family composition [24 CFR 960.257(b)(5)].

##### **BHA Policy**

All families must report all changes in family and household composition that occur between annual reexaminations within 5 business days of the change.

The BHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

##### **New Family Members Not Requiring BHA Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require BHA approval. However, the family is required to promptly notify the BHA 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 BHA 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)].

Although the BHA must verify aspects of program eligibility when any new family member is added, the Streamlining Final Rule removed the requirement that PHAs conduct a reexamination of income whenever a new family member is added. The BHA may state in policy that an income reexamination will be conducted.

Although the BHA must verify aspects of program eligibility when any new family member is added, the Streamlining Final Rule removed the requirement that PHAs conduct a reexamination of income whenever a new family member is added. The BHA may state in policy that an income reexamination will be conducted.

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 11), the BHA must issue the family a new voucher, and the family and BHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the BHA must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

### BHA Policy

Families must request BHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 consecutive calendar days or a total of 30 days within a 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the BHA prior to the individual moving into the unit.

The BHA will not approve the addition of a new family or household member unless the individual meets the BHA's eligibility criteria (see Chapter 2) and documentation requirements.

The BHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If the BHA determines an individual meets the BHA's eligibility criteria and documentation requirements, the BHA 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 a voucher and will be required to move.

If the BHA determines that an individual does not meet the BHA's eligibility criteria or documentation requirements, the BHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.



## **Departure of a Family or Household Member**

Families must promptly notify the BHA if any household 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], the BHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit. The BHA must process an interim for all decreases in adjusted income when a family member permanently moves out of the unit.

### BHA Policy

If a household member ceases to reside in the unit, the family must inform the BHA within 7 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

## **B. CHANGES AFFECTING INCOME OR EXPENSES**

### **Overview**

Interim reexaminations for changes in income or expenses may be scheduled either because the BHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change.

The BHA 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, the BHA may decline to conduct an interim reexamination if the BHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's adjusted income. The BHA may set a lower threshold in BHA policy such as performing an interim for any decreases in adjusted income, although HUD prohibits the BHA from setting a dollar-figure threshold.

However, while the BHA has some discretion, HUD requires that the BHA perform an interim reexamination for a decrease in adjusted income of any amount in two circumstances:

- When there is a decrease in family size attributed to the death of a family member;  
or
- When a family member permanently moves out of the assisted unit during the period since the family's last reexamination.

In the above circumstances, the BHA 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 BHA 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.

### BHA Policy

The BHA will conduct an interim reexamination any time the family's adjusted income has decreased by more than 10 percent.

### **Interim Increases [24 CFR 982.516(c)(3) and Notice PIH 2023-27]**

#### ***Increases Less than 10 Percent***

PHAs must not process interim reexaminations for income increases that result in less than a 10 percent increase in annual adjusted income.

#### ***Increases 10 Percent or Greater***

PHAs must conduct an interim reexamination of family income when the BHA becomes aware that the family's adjusted income has changed by an amount that the BHA estimates will result in an increase of 10 percent or more in adjusted income, with the following exceptions:

- PHAs may not consider any increases in earned income when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction during the same reexamination cycle; and
- PHAs may choose not to conduct an interim reexamination during the last three months of a certification period if a family reports an increase in income within three months of the next annual reexamination effective date.

When the family previously received an interim reexamination for a decrease to adjusted income during the same annual reexamination cycle, a BHA has the discretion whether to consider a subsequent increase in earned income.

### BHA Policy

When a family reports an increase in their earned income between annual reexaminations, the BHA will not conduct an interim reexamination, regardless of the amount of the increase, however if there was a previous decrease that met the 10 percent threshold in earned income since the last reexamination, the BHA will conduct an interim reexamination.

The BHA will process an interim reexamination for any increases in unearned income of 10 percent or more in adjusted income.

The BHA will not perform an interim reexamination when a family reports an increase in income (whether earned or unearned income) within three months of their annual reexamination effective date. However, families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases in accordance with the BHA policies in Chapter 19.

### ***Concurrent Increases in Earned and Unearned Income [Notice PIH 2023-27]***

When the family reports an increase in both earned and unearned income at the same time, the BHA must look at the earned and unearned income changes independently of each other to determine if an interim reexamination is performed. The BHA will only conduct an interim reexamination when the increase independently meets the 10 percent threshold and all other requirements for performing interim reexaminations.

For example, if a family reported increases in both earned and unearned income that overall resulted in a 12 percent increase in their adjusted income, but the change in earned income represented a 7 percent increase and the change in unearned income represented a 5 percent increase, the BHA may not perform an interim for either change since neither change meets the 10 percent threshold amount independently. If the change in unearned income met the 10 percent threshold in this case, the BHA would be required to perform an interim. If the change in earned income met the 10 percent threshold in this case, the BHA would refer to BHA policy to determine whether an interim was required.

### ***Cumulative Increases [Notice PIH 2023-27]***

A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10-percent increase threshold, at which point the BHA must conduct an interim reexamination in accordance with BHA policy.

### ***Family Reporting***

The BHA 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)].

BHA policy may require families to report only changes that the family estimates meet the threshold for an interim reexamination or the BHA may establish policies requiring that families report all changes in income and household composition, and the BHA will subsequently determine if the change requires an interim reexamination [Notice PIH 2023-27].

When the BHA 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].

## BHA 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 5 business days of the date the change takes effect. The family may notify the BHA of changes either orally or in writing. If the family provides oral notice, the BHA may also require the family to submit the changes in writing.

Within 7 business days of the family reporting the change, the BHA will determine whether the change will require an interim reexamination.

If the change will not result in an interim reexamination, the BHA will note the information in the tenant file but will not conduct an interim reexamination. The BHA will send the family written notification within 14 business days of making this determination informing the family that the BHA will not conduct an interim reexamination.

If the change will result in an interim reexamination, the BHA will determine the documentation the family will be required to submit based on the type of change reported and BHA policies in Chapter 8. The BHA 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 5 business days of receiving a request from the BHA. This time frame may be extended for good cause with BHA approval. The BHA will accept required documentation by mail, email, fax, or in person. The BHA will conduct the interim within a reasonable time period based on the amount of time it takes to verify the information.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the BHA determines that an interview is warranted, the family may be required to attend.

### **C. REPORTING OF CHANGES IN FAMILY COMPOSITION**

All changes in family composition must be reported within seven (7) business days of the occurrence.

**Increases in Family Size:** Increases, other than by birth, adoption or court-awarded custody must have the prior approval of the owner and the Authority. If the addition would result in overcrowding according to HQS maximum occupancy standards, the Authority will not approve the addition other than birth, adoption or court-awarded custody and the Authority will issue a larger Voucher (if needed under the Subsidy Standards) for additions to the family in the following cases:

- Addition by marriage/or marital-type relation;
- Addition of a minor who is a member of the nuclear family who had been living elsewhere;
- Addition of an Authority-approved Live-In-Aide;
- Addition of any relation of the Head or Spouse;
- Addition due to birth, adoption or court-awarded custody.

If a new family member is added, family income must include any income of the new family member. If a change due to birth, adoption, court-awarded custody, or need for a live-in attendant requires a larger size unit due to overcrowding, the change in Voucher shall be made effective immediately. The Authority may determine whether to issue a Voucher in this instance based on funding availability.

**D. CONTINUANCE OF ASSISTANCE FOR "MIXED" FAMILIES**

Under the Non-citizens Rule, "Mixed" families are families that include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status. "Mixed" families who were participants on June 19, 1995, shall continue receiving full assistance if they meet the following criteria:

1. The head of household or spouse is a U.S. citizen or has eligible immigrant status;  
and
2. All members of the family other than the head, the spouse, parents of the head, parents of the spouse, and children of the head or spouse are citizens or eligible immigrants. The family may change the head of household to qualify under this provision.

Mixed families who qualify for continued assistance after 11/29/96 may receive prorated assistance only. If they do not qualify for continued assistance, the member(s) that cause the family to be ineligible for continued assistance may move, the family may choose prorated assistance (See Chapter 7, "Factors Related to Total Tenant Payment Determination"), or the Authority may offer temporary deferral of termination (See Chapter 16, "Denial or Termination of Assistance").

Proration of the HAP payment does not affect rent to the owner. The family must pay the portion of the rent to the owner not covered by the prorated housing assistance payment.

**E. 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 BHA policies:

- For rent increases, the BHA 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 BHA policies:

- For rent increases, the BHA must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income.
- For rent decreases, the BHA must implement the change no later than the first rent period following completion of the interim reexamination.

However, the BHA may choose to adopt a policy that would make the effective date of the rent decrease retroactive to the first of the month following completion of the reexamination. PHAs may choose to establish conditions or requirements for when such a retroactive application would apply. PHAs that choose to adopt such policies must ensure the earliest date that the retroactive decrease is applied is the later of:

- The first of the month following the date of the change that led to the interim reexamination; or
- The first of the month following the most recent previous income examination.

In applying a retroactive change in rent as the result of an interim reexamination, the BHA 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.

### **BHA Policy**

**Procedures when the Change is Reported in a Timely Manner:** The Authority will notify the family and the owner of any change in the Housing Assistance Payment to be effective according to the following guidelines:

- Increases in the Tenant Rent are effective on the first of the month following at least thirty (30) days notice.
- Decreases in the Tenant Rent are effective the first of the month following that in which the change occurred. However, no rent reductions will be processed until all the facts have been verified, even if a retroactive adjustment results.

The change may be implemented based on documentation provided by the family or by a third party source.

**Procedures when the Change is Not Reported by the Tenant in a Timely Manner:** If the family does not report the change as described under Timely Reporting above, the family will have caused an unreasonable delay in the interim reexamination processing and the following guidelines will apply:

- Increase in Tenant Rent will be effective retroactive to the date it would have been effective had it been reported on a timely basis. The family will be liable for any overpaid housing assistance and may be required to sign a Repayment Agreement or make a lump sum payment.

- Decrease in Tenant Rent will be effective on the first of the month following completion of processing by the Authority and not retroactively. The BHA will decide to apply decreases retroactively on a case-by-case basis.

**Procedures when the Change is Not Processed by the Authority in a Timely Manner:**

- Increases in tenant rent: will be effective after the required thirty (30) days' notice prior to the first of the month after completion of processing by the Authority.
- Decreases in tenant rent: the overpayment by the family will be calculated retroactively to the date it should have been effective, and the family will be credited for the amount.

If the change is not reported within the required time period, or if the family fails to provide documentation or signatures, it will be considered untimely reporting.

**BHA Errors:** If the Authority makes a calculation error at admission to the program or at an annual reexamination, an interim reexamination will be conducted to correct the error, but the family will not be charged retroactively.

**Other Interim Reporting Issues:** In instances where fraud is suspected, an interim recertification of the family may be required.

**PART III: NON-INTERIM REEXAMINATION TRANSACTIONS [Notice PIH 2023-27]**

Families may experience changes within the household that do not trigger an interim reexamination under BHA policy and HUD regulations but which HUD still requires the BHA to report to HUD via Form HUD-50058. These are known as *non-interim reexamination transactions*. In these cases, PHAs will submit a separate, new action code on Form HUD-50058. The following is a list of non-interim reexamination transactions:

- Adding or removing a hardship exemption for the child care expense deduction;
- Updating or removing the phased-in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (the phased-in relief will begin at an eligible family's first annual or interim reexamination, whichever is sooner, after January 1, 2024);
- Adding or removing general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction;
- Adding or removing a minimum rent hardship;
- Adding or removing a non-family member (i.e., live-in aide, foster child, foster adult);

- Ending a family's EID or excluding 50 percent (decreased from 100 percent) of a family member's increase in employment income at the start of the second 12-month EID period.
- Adding a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Removing a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Adding/Updating a family or household member's Social Security number;
- And updating a family member's citizenship status from eligible to ineligible or vice versa, resulting in a change to the family's rent and/or utility reimbursement, if applicable (i.e., family begins receiving prorated assistance or previously prorated assistance becomes full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible noncitizen(s).

PHAs must make all other changes to assets, income, and deductions at the next annual or interim reexamination of income, whichever is sooner.



## Chapter 14

### MOVES WITH CONTINUED ASSISTANCE/PORTABILITY

#### INTRODUCTION

HUD regulations permit families to move with continued assistance to another unit within the Authority's jurisdiction, or to a unit outside of the Authority's jurisdiction under Portability procedures. The regulations also allow the Authority the discretion to develop policies which define any limitations or restrictions on moves. This Chapter defines the procedures for moves, both within and outside of, the Authority's jurisdiction, and the policies for restriction and limitations on moves.

#### A. ALLOWABLE MOVES

A family may move to a new unit if:

1. The assisted lease for the old unit has terminated because the Authority has terminated the HAP contract for owner breach, or the lease was terminated by mutual agreement of the owner and the family in writing and signed by both parties.
2. The owner has given the family a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the family (unless assistance to the family will be terminated).
3. The family has given proper notice of lease termination (if the family has a right to terminate the lease on notice to owner) to the owner/landlord and the Authority.

#### B. RESTRICTIONS ON MOVES

Families will not be permitted to move within the Authority's jurisdiction during the initial year of assisted occupancy. Families will not be permitted to move outside the Authority's jurisdiction under portability procedures during the initial year of assisted occupancy. The Authority will deny permission to move if there is insufficient funding for continued assistance.

The Authority may also deny permission to move to if:

- The family has repeatedly caused damages to their units and/or associated property
- The family has violated a Family Obligation.
- The family owes the Authority money.
- The family has moved or been issued a Voucher within the last twelve (12) months.
- The Authority will not issue a participant a new Voucher for a portable move if the family has moved out of the family's unit in violation of the lease. (Section 553 of the 1998 Act; Section 24 CFR 982.353)

The Executive Director or his designee may make exceptions to these restrictions on a case by case basis if there is an emergency reason for the move over which the participant has no control.

### C. **PROCEDURE FOR MOVES**

**Issuance of Voucher:** If the family has not been recertified within the last one hundred twenty (120) days, the Authority will issue the voucher to move after conducting the recertification/as soon as the family requests the move and conducted a final HQS inspection of their current unit. If the family does not locate a new unit, they may remain in the current unit so long as the owner permits. The annual re-certification date will be changed to coincide with the new lease-up date.

**Notice Requirements:** Briefing sessions emphasize the family's responsibility to give the owner and the Authority proper written notice of any intent to move. The family must give the owner the required number of days written notice of intent to vacate specified in the lease and must give a copy to the Authority simultaneously.

**Time of Contract Change:** A move within the same building or project, or between buildings owned by the same owner, will be processed like any other move except that there will be no overlapping assistance.

In a move, assistance stops at the old unit at the end of the month in which the tenant ceased to occupy, unless proper notice was given to end a lease mid-month. Assistance will start on the new unit on the effective date of the lease and contract. Assistance payments may overlap for the month in which the family moves.

### D. **PORTABILITY**

Portability applies to families moving out from another BHA's jurisdiction or into the Authority's jurisdiction within the United States and its territories. Under portability, families are eligible to receive assistance to lease a unit outside of the initial Authority's jurisdiction. The unit may be located:

1. In the same state as the initial Authority;
2. In the same Metropolitan Statistical Area (MSA) as the Authority, but in a different state;
3. In an MSA adjacent to the MSA of the Authority, but in a different state.
4. In the jurisdiction of a BHA anywhere within the United States that administers a tenant based program.

### E. **OUTGOING PORTABILITY**

When a family requests to move to outside of the Authority's jurisdiction, the request must specify the area to which the family wants to move. If the family is moving to a unit located in the same state as the initial Authority, in the same MSA, but in a different state, or in an adjacent MSA in a different state, and there is not an Authority in the area where the unit is located, the initial Authority will be responsible for the administration of the family's assistance. The Authority will choose a management company, another Authority or a private contractor to administer the assistance. If there is more than one Authority in the area in which the family has selected a unit, the Authority will choose the receiving Authority.

### **Restrictions on Portability**

4. Families will not be permitted to exercise portability during the initial twelve (12) month period after admission to the program, if neither the head or spouse had a domicile (legal residence) in the Authority's jurisdiction at the date of their initial application for assistance unless the receiving and initial Authority agree to allow the move.
5. If the family is in violation of a family obligation.
6. If the family owes money to the Authority.

**Outgoing Portability Procedures:** The Authority will provide pre-portability counseling for those families who express an interest in portability. If the family is utilizing portability for their initial lease-up, the Authority will determine if the family is within the very low income limit of the receiving BHA. The Authority will notify the receiving BHA that the family wishes to relocate into its jurisdiction. The Authority will advise the family how to contact and request assistance from the receiving BHA. The Authority will provide the following documents and information to the receiving Authority:

1. A copy of the family's Voucher, with issue and expiration dates, formally acknowledging the family's ability to move under portability.
2. The most recent HUD 50058 form and verifications.
3. Declarations and verifications of U.S. citizenship/eligible immigrant status.
4. HUD 52665 - Family Portability Information, with Part 1 completed.
5. Current information related to eligibility and rent payments.
6. Administrative fee schedule for billing purposes.
7. Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data. In addition to these documents, the Authority will provide the following information, if available, to the receiving BHA:
  - Social security numbers (SSNs)
  - Documentation of SSNs for all non-exempt household members whose SSNs have not been verified through the EIV system
  - Documentation of legal identity
  - Documentation of citizenship or eligible immigration status
  - Documentation of participation in the earned income disallowance (EID) benefit

The Receiving BHA must notify the Authority within one hundred eighty 180 days of the following:

- The Receiving BHA decides to absorb the family into their own program. The family leases up or fails to submit a Request for Lease Approval by the required date.
- Assistance to a portable family is terminated by the Receiving BHA.
- The family requests to move to an area outside the Receiving BHA's jurisdiction.

**Payment to the Receiving BHA:** The Authority will requisition funds from HUD based on the anticipated lease-ups of portable Vouchers in other Authority's jurisdictions. Payments for families in other jurisdictions will be made to other Authority's when billed or in accordance with other HUD approved procedures for payment.

When billed, the Authority will reimburse the receiving HA for 100% of the Housing Assistance Payment, 100% of the Special Claims paid on HAP contracts effective prior to October 2, 1995, and 80% of the Administrative Fee (at the initial HA's rate), and any other HUD-approved fees.

Upon execution of HUD 52665, the initial Authority will start reimbursing the Receiving BHA for 100% of the Housing Assistance Payment, eighty percent (80%) of the Administrative Fee (at the initial Authority's rate) and any other HUD-approved fees.

**Claims:** The Authority will be responsible for collecting amounts owed by the family for claims paid and for monitoring the repayment. The Authority will notify the Receiving BHA if the family is in arrears or if the family has refused to sign a Repayment Agreement, and the Receiving BHA will be asked to terminate assistance to the family as allowed by this Administrative Plan. Receiving BHA's will be required to submit hearing determinations to the Authority within thirty (30) calendar days.

#### **F. INCOMING PORTABILITY**

**Absorption or Administration:** The Authority will accept a family with a valid Voucher from another jurisdiction and administer or absorb the Voucher based on the availability of funding. If administering for the initial BHA, the family will be issued a "Portability" Voucher by the Authority with the same start date. The Authority may grant extensions in accordance with this Administrative Plan.

Incoming portable families who have not yet been absorbed may be absorbed before the Authority selects new applicants from the Waiting List. The Authority will absorb incoming Vouchers in cases where the Initial BHA absorbs an equal number of the Authority's outgoing Vouchers. The Authority may absorb vouchers, if such absorption does not exceed five percent (5%) of households assisted.

When the receiving BHA does not absorb the incoming Voucher, it will administer the Initial Authority's Voucher and the receiving Authority's policies will prevail.

For initial lease-up, the family must be within the Authority's Very-Low Income limits. For participants, the Authority may issue a Voucher. If the family is ineligible under the receiving Authority's low income limit because the form of assistance offered causes the family to change programs, the receiving Authority must absorb the family without a change in the form of assistance, or administer the family's current form of assistance.

The Authority will issue a "Portability Voucher" according to its own Subsidy Standards. If the Family has a change in family composition which would change the Voucher size, the Authority will change to the proper size based on its own Subsidy Standards. HUD expects the Voucher to be issued within two (2) weeks of receiving the HUD 52665 form and supporting documents. The Authority will decide whether to extend the "Portability

Voucher" and for what period of time. The Authority's policy on suspensions will apply. However, if the Family decides not to lease-up in the Authority's jurisdiction, the Family must request an extension from the Initial BHA.

**Income and TTP of Incoming Portables:** As the Receiving BHA, the Authority will conduct a recertification interview but may only verify the information provided if the documents are missing or are over one hundred twenty (120) days old, whichever is applicable, or there has been a change in the family's circumstances. If the family's income exceeds the income limit of the Authority, the family will not be denied assistance unless the family is an applicant (and over the Very-Low Income Limit). The Authority will re-verify the family's information, including performing background/criminal screening, if documents are unavailable or to investigate potential fraud.

If the family's income is such that a \$0 subsidy amount is determined prior to lease-up in the Authority's jurisdiction, the Authority will refuse to enter into a contract on behalf of the family at \$0 assistance.

**Requests for Lease and Tenancy Lease Addendum (Tenancy Approval):** A briefing will be mandatory for all portability families. When the family submits a Request for Lease and Tenancy Addendum, it will be processed using the Authority's policies. If the family does not submit a Lease and Tenancy Lease Addendum, the Initial Housing Authority will be notified within thirty (30) days by the Authority.

If the Family leases up, the Authority will notify the Initial BHA within sixty (60) days of the contract execution, and any applicable administrative fees. Any applicable administrative fees will be received by the Authority no later than sixty days (60) following the expiration date of the voucher issued by the initial BHA.

If the Authority denies assistance to the family, the Authority will notify the Initial BHA within thirty (30) days and the family will be offered a review or hearing. The Authority will notify the family of its responsibility to contact the Initial BHA if the family wishes to move outside the Authority's jurisdiction under continued portability.

**Terminations:** The Authority will notify the Initial BHA in writing of any termination of assistance within thirty (30) days of the termination. If an Informal Hearing is required and requested by the family, the hearing will be conducted by the Authority using the regular hearing procedures included in this Plan. A copy of the hearing decision will be furnished to the Initial BHA.

The Initial BHA will be responsible for collecting amounts owed by the family for claims paid and for monitoring repayment. If the Initial BHA notifies the Authority that the family is in arrears or the family has refused to sign a repayment agreement, the Authority will terminate assistance to the family.

**Required Documents:** As Receiving BHA, the Authority will require the following documents from the Initial BHA:

7. A copy of the family's Voucher, with issue and expiration dates, formally acknowledging the family's ability to move under portability.
8. The most recent HUD 50058 form and verifications.
9. Declarations and verifications of U.S. citizenship/eligible immigrant status.
10. HUD-52665 Family Portability Information
11. The Authority can request income verification, copies of Social Security cards, and birth certificates from the initial HA, but the initial HA is not required by Notice to provide this information. Authority may need to obtain it.
12. The names of initial BHA staff designated for inquiries on eligibility and billing the Administrative fee schedule for billing purposes.

**Billing Procedures:** As the Receiving BHA, in cases which the Authority does not absorb a family, the Authority will bill the initial BHA monthly for the Housing Assistance Payments. The Authority will submit the HUD- 52665 which will initiate the billing cycle.

The Authority will receive one hundred percent (100%) of the Housing Assistance Payment, one hundred percent (100%) of Special Claims and eighty percent (80%) of the Administrative Fee (at the Initial HA's rate) and any other HUD-approved fees, for each "Portability" Voucher leased as of the first day of the month. The Authority will notify the Initial Authority of changes in subsidy amounts and will expect the initial Authority to notify the Authority of changes in the Administrative Fee amount to be billed.

## Chapter 15

### CONTRACT TERMINATIONS

#### INTRODUCTION

The Housing Assistance Payments (HAP) Contract is the contract between the owner and the Authority which defines the responsibilities of both parties. This Chapter describes the circumstances under which the contract can be terminated by the Authority and the owner, and the policies and procedures for such terminations.

#### A. CONTRACT TERMINATION

The term of the HAP Contract is the same as the term of the lease. The Contract between the owner and the Authority may be terminated by the Authority, or by the owner or tenant terminating the lease.

The HAP Contract terminates automatically upon the death of a single member household, including single member households with a Live-In Aide. The termination of HAP payments to the landlord/owner are effective the first of the month following the month in which the death occurred. No future subsidy payments on behalf of the family will be made by the Authority to the owner after the month in which the Contract is terminated. The owner must reimburse the Authority for any subsidies paid by the Authority for any period after the contract termination date.

If the family continues to occupy the unit after the Section 8 contract is terminated, the family is responsible for the total amount of rent due to the owner. After a contract termination, if the family meets the criteria for a move with continued assistance, the family may lease-up in another unit. The contract for the new unit may begin during the month in which the family moved from the old unit.

#### B. TERMINATION BY THE FAMILY: MOVES [24 CFR 982.351 (c)(2)]

The lease stipulates that the family cannot move from the unit until after the first year of the lease under mutually agreed upon by both the owner and the family. The notice period to the landlord is determined by the Contract, but may not exceed sixty (60) days.

#### C. TERMINATION BY THE OWNER: EVICTIONS [24 CFR 982.310, 982.455]

If the owner wishes to terminate the lease, the owner is required to evict, using the notice procedures in the HUD regulations and State/local law. The owner must provide the Authority with a copy of the eviction notice. The owner must provide the tenant a written notice specifying the grounds for termination of tenancy, at or before the commencement of the eviction action. The notice may be included in, or may be combined with, any owner eviction notice to the tenant.

The owner eviction notice means a notice to vacate, or a complaint, or other initial pleading used under State or local law to commence an eviction action. State and local laws will prevail termination for all Housing Choice Voucher holders. The contract and lease terms and conditions require that the owner may only evict for:

1. Serious or repeated violations of the lease; including but not limited to failure to pay rent or other amounts due under the lease;
2. Violations of federal, state or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises or repeated violations of the terms and conditions of the lease or;
3. Other good cause, including; but not limited to:
  - Criminal activity as defined by the Fair Chance in Housing Act by the tenant, any member of the household, a guest or another person under the tenant's control that threatens the health, safety or right to peaceful enjoyment of the premises by the other residents, or persons residing in the immediate vicinity of the premises including engaging in Domestic Violence Crimes.
  - Any conviction for the manufacture or production of methamphetamine on the premises of federally-assisted housing.
  - A requirement under any State sex offender lifetime registration program.
  - Any conviction for murder, aggravated sexual assault, kidnapping, arson, human trafficking, sexual assault, or endangering the welfare of a child in violation of N.J.S.2C:24-4(b)(3);
  - Any conviction that requires a lifetime state sex offender registration;
  - Any conviction for a 1<sup>st</sup> degree indictable offense, or release from prison, for that offense within the past 6 years;
  - Any conviction for a 2<sup>nd</sup> or 3<sup>rd</sup> degree indictable offense, or release from prison for that offense, within the past 4 years;
  - Any conviction for a 4<sup>th</sup> degree indictable offense, or release from prison for that offense, within the past 1 year.
  - Tenant history of disturbance of neighbors, destruction of property, or behavior resulting in damage to the premises.
4. Other good cause, after the first year of the lease, includes:
  - Failure by the family to accept the offer of a new lease or revision;
  - A family history of disturbance of neighbors or destruction or property, or of living or housekeeping habits resulting in damage to the units or premises;
  - The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential unit; or
  - 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 rental.)



The owner must specify the section of the lease that has been violated and cite some or all of the ways in which the tenant has violated that section as document for Authority termination of assistance. The eviction notice must specify the cause for the action.

Housing Assistance Payments are paid to the owner under the terms of the HAP Contract. If the owner has begun eviction and the family continues to reside in the unit, the Authority must continue to make Housing Assistance Payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

The owner must give the Tenant a written notice that specifies the grounds for termination of the tenancy during the term of the lease. This notice may be included in, or may be combined with, any owner eviction notice to the Tenant. The eviction notice is 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 Authority will continue Housing Assistance Payments until the family moves or is evicted from the unit. If the action is finalized in court, the owner must provide the Authority with the documentation, including notice of the lock-out date.

If the owner opts out for business or economic reasons, the tenant must be given ninety (90) days notice, with a copy to the Authority. Such reasons include desire to sell the property, renovation of the unit, or desire to obtain a higher rent than the Authority will approve.

The Authority must continue making Housing Assistance Payments to the owner in accordance with the Contract as long as the tenant continues to occupy the unit and the Contract is not violated. By endorsing the monthly check or utilizing the monies from the direct deposit from the Authority, the owner certifies that the tenant is still in the unit and s/he is in compliance with the contract.

If the eviction is not due to a serious or repeated violation of the lease, and if the Authority has no other grounds for termination of assistance, the Authority may issue a new voucher so that the family can move with continued assistance.

**D. TERMINATION OF THE CONTRACT BY THE AUTHORITY [24 CFR 982.404 (a), 982.453, 982.454, 982.552 (a)(3)]**

The term of the HAP contract terminates when the lease terminates, when the Authority terminates program assistance for the family, and when the owner has breached the HAP contract. Any of the following actions will be considered a breach of contract by the owner:

1. The owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit to HQS standards, including any standards the Authority has adopted in this policy.
2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the 1937 Act (42 U.S.C. 1437f).

3. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
4. The owner has failed to comply with regulations, the mortgage or note, or the regulatory agreement for projects with mortgages insured by HUD or loans made by HUD.
5. The owner has engaged in drug trafficking.

*The Authority may also terminate the contract if:*

- The Authority terminates assistance to the family.
- The family is required to move from a unit which is under-occupied or overcrowded.
- Funding is no longer available under the ACC.

The Contract will terminate automatically if one hundred eighty (180) days have passed since the last Housing Assistance Payment to the owner.

**Notice of Termination:** The Authority will provide the owner and family with at least thirty (30) days written notice of termination of the contract.

**E. TERMINATIONS DUE TO INELIGIBLE IMMIGRATION STATUS [24 CFR 5.514]**

Families who were participants on June 19, 1995, but are ineligible for continued assistance due to the ineligible immigration status of all members of the family, or because a “mixed” family chooses not to accept pro-ration of assistance, are eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for transition to affordable housing. Deferrals may be granted for intervals not to exceed six (6) months, up to an aggregate maximum of:

- three (3) years for deferrals granted prior to 11/29/96, or
- eighteen (18) months for deferrals granted after 11/29/96

The family will be notified in writing at least sixty (60) days in advance of the expiration of the deferral period that termination of assistance will not be deferred because:

- a) granting another deferral will result in an aggregate deferral period of longer than the statutory maximum (three years for deferrals granted before 11/29/96; eighteen (18) months for deferrals granted after 11/29/96), or
- b) a determination has been made that other affordable housing is available.

**F. TERMINATION DUE TO OWNER DISAPPROVAL**

If the Authority terminates the contract due to owner disapproval (See Chapter 10, “Lease and Tenancy Lease Addendum and Contract Execution”), the Authority will provide the owner and family with at least thirty (30) days written notice of termination of the contract.

## Chapter 16

### DENIAL OR TERMINATION OF ASSISTANCE

#### INTRODUCTION

The Authority may deny or terminate assistance for a family because of the family's action or failure to act. The Authority will provide families with a written description of the Family Obligations under the Program, the grounds under which the Authority can deny or terminate assistance, as well as the Authority's informal hearing procedures. This Chapter describes when the Authority is required to deny or terminate assistance; the Authority's policies for the denial of a new commitment of assistance; and the grounds for termination of assistance under an outstanding HAP Contract.

The Authority must ask all adult household members to provide a list of the states in which they have lived and whether their name appears on any lifetime sex offender registry. The Authority must conduct criminal background screenings necessary to determine if each household adult member is subject to a lifetime sex offender registration. The Authority must also determine if any adult in the household has been convicted for the manufacture or production of methamphetamine on the premises of federally-assisted housing. Both circumstances are grounds for denial or termination of assistance.

The Authority is also required to obtain a criminal background check at the request of the owner. **The report may not be shared directly with the owner and must be destroyed immediately unless a review is requested and upon completion of the review the criminal report must be destroyed.** The Authority is also required to utilize the "Debts Owed to PHAs & Terminations Report" to identify any previous evictions listed on the HUD website or the Authority's other required reasons for denial.

#### A. GROUND FOR DENIAL/TERMINATION OF ASSISTANCE

If denial or termination is based upon behavior resulting from a disability, the Authority will delay the denial or termination in order to determine if there is an accommodation which would meet the negate the behavior resulting from the disability.

If an applicant is otherwise eligible, admission to the program may not be denied on the basis or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking in accordance with the Violence Against Women Act (VAWA) attached to this Plan.

**Form of Denial/Termination:** Denial of assistance for an applicant may include any or all of the following:

- Denial for placement on the Authority waiting list.
- Denying or withdrawing a Voucher.
- Refusing to enter into a HAP contract or approve a lease.
- Refusing to process or provide assistance under portability procedures.

*Termination of assistance for a participant may include any or all of the following:*

- Refusing to enter into a HAP Contract or approve a lease.
- Terminating Housing Assistance Payments under an outstanding HAP contract.
- Refusing to process or provide assistance under portability procedures.

**Mandatory Denial and Termination:** In accordance with the Fair Chance in Housing Act and HUD regulations, the Authority must deny assistance to applicants, and terminate assistance for participants under the following conditions:

- If any household member has been convicted of the manufacture or production of methamphetamine, especially if on the premises of federally-assisted housing.
- If any household member is subject to a lifetime sex offender registration requirement.
- Any conviction for murder, aggravated sexual assault, kidnapping, arson, human trafficking, sexual assault, or endangering the welfare of a child in violation of N.J.S.2C:24-4(b)(3);
- Any conviction that requires a lifetime state sex offender registration;
- Any conviction for a 1<sup>st</sup> degree indictable offense, or release from prison, for that offense within the past 6 years;
- Any conviction for a 2<sup>nd</sup> or 3<sup>rd</sup> degree indictable offense, or release from prison for that offense, within the past 4 years;
- Any conviction for a 4<sup>th</sup> degree indictable offense, or release from prison for that offense, within the past 1 year.
- If any family member does not establish citizenship or eligible immigration status
- If any member of the family fails to sign and submit to the Authority required consent forms for obtaining information.
- If the family is under contract and one hundred eighty (180) days have elapsed since the Authority's last housing assistance payment was made.
- The family does not meet the restrictions on net assets and real property ownership as required by 24 CFR 5.618.
- Under the FCHA, the Authority cannot ever consider the following types of criminal records:
  - Arrests or charges that did not result in a criminal conviction

- Expunged convictions
- Convictions erased through executive pardon
- Vacated and otherwise legally nullified convictions
- Juvenile adjudications of delinquency
- Sealed records

**Discretionary Criteria for Denial or Termination:** The Authority may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following additional reasons:

1. The family violates any family obligation under the program as listed in 24 CFR 982.551, fails to submit recertification information, fails to attend informal hearings, and other scheduled appointments.
2. Any member of the family has ever been terminated under the voucher program or been evicted from federally-assisted housing within the past five years.
3. The family currently owes rent or other amounts to the Authority or to another Authority in connection with Section 8 or public housing assistance under the 1937 Act.
4. The family has not reimbursed any Authority for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
5. The family breaches a repayment agreement with an Authority to pay amounts owed to the Authority, or amounts paid to an owner by an Authority. Fails to abide by terms of the repayment agreement.
6. Have demonstrated unsatisfactorily, by past performance, the ability to pay such monthly rent.
7. Have demonstrated, through unacceptable references, the ability to conduct themselves in a manner that will not impair the environment and/or security of other tenants residing in the development. This includes a record of a serious disturbance of neighbors, destruction of property or other disruptive or dangerous behavior and neglect of children which endangers their health, safety or welfare;
8. The family has engaged in or threatened abusive or violent behavior toward Authority personnel. “Abusive or violent behavior towards Authority personnel” includes verbal as well as physical abuse or violence, such as the use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate, may be cause for termination or denial. “Threatening” refers to oral or written threats or physical gestures that communicate an intent to abuse or commit violence. Actual physical abuse or violence will always be cause for termination.

9. Have demonstrated, by past performance and behavior, that family members are unlikely to obey all rules and regulations as embodied in the tenant's lease, as well as the rules and regulations embodied herein;
10. Have demonstrated, by past behavior, that family members will not maintain both the apartment they are seeking to lease as well as the common area of the development in which the apartment is located in a safe, healthy and sanitary condition. This includes the creation of a fire hazard through acts such as the hoarding of rags and papers; damage to premises and equipment, if it is established that the family is responsible for the condition; seriously affecting neighbors by causing infestation, foul odors, depositing garbage in the halls, or serious neglect of the premises;
11. The Authority will not assist a family if they owe rent, other amounts or have judgments to any housing authority or any other federal subsidized housing program.
12. The Authority will not assist a family if they have previously vacated a public or assisted housing unit in violation of the terms of their lease;
13. Have been previously evicted from public housing for any reason. Also, any applicant who has been evicted from public housing or any Section 8 rental assistance program for drug related criminal activity is ineligible for admission. To obtain eligibility for readmission, the individual, who engaged in the activity, must have successfully completed a rehabilitation program approved by the Authority or if the Authority determines that the circumstances leading to the eviction no longer exist.
14. Have committed acts that would constitute fraud in connection with any federal housing program. This includes intentional or unintentional misrepresentation of verification information.
15. Did not provide information required within the specified timeframe as outlined in Section B – Family Obligations, Part 1.
16. The Authority will terminate assistance to any individual who engages in acts of physical violence against family members in accordance with the provisions in VAWA as well as prescribed by law applicable to terminations of tenancy/participation and evictions. The full Violence Against Women Act (VAWA) policy and procedures are attached.

If the Authority determines that a person is illegally using a controlled substance or abuses alcohol in a way that may interfere with the health, safety or right to peaceful enjoyment of the premises by other Tenants they will be denied admission or terminated from the HCVP. The Authority will consider all relevant circumstances when deciding whether to withdraw the conditional offer of a voucher based on a family's history except in the situations for which denial or termination of assistance is mandated.

Upon review of the above permissible convictions, the Authority must conduct an **Individualized Assessment** of the:

- a) Nature and severity of the offense(s);
- b) Applicant/Participant age at the time of the offense(s);
- c) How recently the offense(s) occurred;
- d) Any information the applicant provided in their favor since the offense(s);
- e) If the offense(s) happened again in the future, whether that would impact the safety of other tenants or property; and
- f) Whether the offense(s) happened on, or was connected to property that the applicant/participant had rented or leased.

If the Authority decides to take action against the applicant/participant after the Individualized Assessment, the Authority will follow the FCHA, and other applicable laws, when considering whether to withdraw the conditional offer of a voucher for criminal activity, as shown by a criminal record. Factors considered include performing an Individualized Assessment, providing an opportunity for the applicant/participant to dispute the accuracy and relevance of information and to provide evidence of rehabilitation.

The Authority will deny or terminate the housing assistance if the applicant or participant has: a history of bad credit; and/or has a history of bad housekeeping, based upon inspection of prior unit; or if the Authority determines that a household member has furnished false or misleading information.

This list is not to be construed as totally inclusive and there may be circumstances not listed which may be used for denial or termination of admission if the Authority determines that the household or member thereof would have a detrimental effect on the health, safety or right to peaceful enjoyment of the premises by other Tenants.

In accordance with the FCHA and federal regulations, applicants/participants for whom the conditional offer of a voucher has been withdrawn will be given a written **Notice of Withdrawal** indicating the specific reasons for the withdrawal, and notifying the applicant/participant of the right to request an informal review/appeal of the denial of the rental subsidy.

The applicant/participant can then request a copy of all the information upon which the Authority relied in making the decision to withdraw the conditional offer of a voucher. The applicant/participant must make the request within thirty (30) days of receiving the Notice of Withdrawal. The Authority must provide the information free of charge within ten (10) days after receiving a timely request.

The applicant/participant may then use that information to request an informal review/appeal, claiming that the Authority violated the FCHA and provide additional information in support of the violation. The Authority must consider and provide a determination based on the new information within thirty (30) days.

**Misrepresentation by the Applicant or Tenant:** If an applicant or tenant is found to have made intentional or tenant is found to have made intentional or unintentional



misrepresentations at any time which resulted in the applicant or tenant being classified as eligible, when, in fact, they were ineligible, the applicant will be declared ineligible and the lease and/or application will be terminated because of the misrepresentation by the applicant/tenant. If such misrepresentation resulted in the tenant paying a lower rent that was appropriate, tenant shall be required to pay the difference between the actual payments and the amount, which should have been paid. In justifiable instances, the Authority may take such other actions, as it deems appropriate, including referring the tenant to the proper authorities for possible criminal prosecution.

**Grounds for Terminating Assistance:** includes if the Authority determines that the family fails to disclose to the Authority any HUD or other official notification it has received regarding discrepancies in the amount or verification of family income or for any Housing Choice (Section 8) Voucher related issue. The Authority may also deny the request of a participating family to add a household member if that person is found to be ineligible for assistance after a review of the above criteria.

### **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 BHA must comply with all the confidentiality requirements under VAWA. The BHA 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

#### BHA Policy

The BHA defines *not sufficient for the size of the family* as being overcrowded based on the BHA's subsidy standards in Chapter 6 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 the BHA 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.

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

Should the BHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the BHA 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 BHA must deny admission to the family [Notice PIH 2012-28].

For other criminal activity, the BHA may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 982.552(c)(2)(ii)].

#### BHA Policy

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

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

## **B. FAMILY OBLIGATIONS**

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. The BHA 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

1. The family must supply any information that the Authority or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812). "Information" includes any requested certification, release or other documentation within ten (10) business days of said request.
2. The family must supply any information requested by the Authority or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements. A change in Family Composition Family Income, Composition, or other relevant circumstances must be reported immediately to the Authority.
3. The family must provide social security cards for all members of the family and must sign and submit consent forms for obtaining information in accordance with 24 CFR part 760 and 24 CFR part 813.
4. All information supplied by the family must be true and complete.
5. The family is responsible for a Housing Quality Standard breach caused by the family as described in 24 CFR 982.404(b).
6. The family must allow the Authority to inspect the unit at reasonable times and after reasonable notice.
7. The family may not commit any serious or repeated violation and breach of the lease.

### BHA Policy

The BHA 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, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.

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 criterion 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, or human trafficking will not be construed as serious or repeated lease violations by the victim [see 24 CFR 5.2005(c)(1)].

The family must notify the owner and, at the same time, notify the Authority before the family moves out of the unit or terminates the lease on notice to the owner. Notice must be given in writing to the owner and the Authority.

8. The family must promptly give the Authority a copy of any owner eviction notice.
9. The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
10. The composition of the assisted family residing in the unit must be approved by the Authority. The family must promptly inform the Authority of the birth, adoption or court-awarded custody of a child. The family must request Authority approval to add any other family member as an occupant of the unit.
11. The family must promptly notify the Authority if any family member no longer resides in the unit.
12. If the Authority has given approval, a foster child or a live-in aide may reside in the unit. If the family does not request approval or the Authority approval is denied, the family may not allow a foster child or live-in aide to reside with the assisted family. The Authority will annually request the family to justify and document the necessity for/and verify services that the live-in-aide is providing. A person who is the primary care provided for additional family members (e.g. young children) and would require additional bedrooms, will not be approved as a live-in-aide.
13. Members of the household may engage in legal profit-making activities in the unit, but only if such activities are incidental to primary use of the unit as a residence by members of the family. The income must be reported to the Authority and the owner approval is required.
14. The family must not sublease or sublet the unit.
15. The family must not assign the lease or transfer the unit.
16. The family must supply any information or certification requested by the Authority to verify that the family is living in the unit, or relating to family absence from the unit, including any Authority requested information or certification on the purposes of family absences. The family must cooperate with the Authority for this purpose. The family must promptly notify the Authority of absence from the unit.
17. The family must not own or have any interest in the unit.
18. The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.
19. The members of the family may not engage in criminal activity per the FCHA.

20. The family must not damage the unit or premises (other than damage from ordinary wear and tear) or permit any guest to damage the unit or premises.
21. The family must not make any payments or other consideration to the landlord in addition to their monthly rental payment specified by the Authority, additional rent is prohibited.
22. The members of the family may not engage in 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.
23. An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, State or local housing assistance program.
24. The members of the family may not engage in or threaten abusive or violent behavior toward Housing Authority personnel.
25. The members of the family must not abuse alcohol in a way that threaten the health, safety, or right to peaceful enjoyment of other residents and persons residency in the immediate vicinity of the premises.

**Limited Periods of Denial of Admissions:** If an applicant is denied admission, it may be determined by the Authority to only be a limited denial. These time frames are only a guideline and may be extended if the Authority deems it is in the best interest of the Authority and/or the tenants. The timeframe for these denials is as follows:

*a. One (1) Year Limited Denial:*

- Bad credit history
- Bad housekeeping habits
- Bad landlord references
- Bad rent payment history
- Minor violation of lease
- Failure to provide adequate verifiable documentation; and/or
- Failure to provide documentation in the specific timeframe
- Non-disclosure

*b. Three (3) Year Limited Denial:*

- Eviction from public and or assisted housing because of criminal activity as per the FCHA; and/or
- Past behavior which may be considered a threat to other Tenants.
- Fraud or give false information during the initial or any subsequent certifications to the Authority
- Non-disclosure

*c. Lifetime Denial:*

- Household with a member who is subject to a lifetime registration under any State’s sex offender registration law; and/or
- Applicant who has been convicted of manufacturing or producing methamphetamine on the premises of federally-assisted housing.

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

The Authority may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The Authority may permit the other members of a family to continue in the program, (removal of a culpable household member), repayment of family debts; consideration of rehabilitation, unfavorable behavior of a family member with disabilities upon determination that alternative measures would warrant a “reasonable accommodation.”

**Enforcing Family Obligations/Explanations and Terms:**

The term "Promptly" when used with the Family Obligations always means "within seven (7) business days." Denial or termination of assistance is always optional except where this Plan or the regulations state otherwise.

HQS Breach: The Authority’s will determine if an HQS breach as identified in 24 CFR 982.404 (b) is the responsibility of the family. Families may be given extensions to cure HQS breaches by the Executive Director, or the Director of Housing Choice Voucher.

Serious or Repeated Lease Violations: The following criteria will be used to decide if a serious or repeated violation of the lease will cause a termination of assistance:

- If the owner notifies the family of termination of the lease for serious or repeated lease violations, and the family moves from the unit prior to the completion of court action, and the Authority determines that the cause is a serious or repeated violation of the lease based on available evidence.
- If the owner terminates tenancy through court action.
- If there are neighborhood complaints or other third party information, and the Authority has verified the information.

Notification of Eviction: If the family requests assistance to move and they did not notify the Authority of an eviction within ten (10) business days of receiving the Notice of Lease Termination, the move will be denied.

Proposed additions to the family may be denied to:

- Persons who have been evicted from public housing;
- Persons who have previously violated a family obligation listed in 24CFR 982.51 of the HUD regulations;
- Persons who have been part of a family whose assistance has been terminated under the Voucher program;
- Persons who commit criminal activity per the FCHA;
- Persons who do not meet the Authority's definition of family;
- Persons who commit fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- Persons who currently owe rent or other amounts to the Authority or to another Authority in connection with Section 8 or public housing assistance under the 1937 Act;
- Persons who have engaged in or threatened abusive or violent behavior toward Authority personnel;
- Persons who are convicted lifetime registered sex offenders;
- Lack of credit worthiness;
- Non-disclosure of information;
- Persons who have been convicted of manufacturing or producing methamphetamine on the premises or the premises of federally-assisted housing.

Family Member moves out: Families are required to notify the Authority if any family member leaves the assisted household. When the family notifies the Authority, they must furnish a statement as to whether the family member is temporarily or permanently absent.

Limitation on Profit-making Activity in Unit: If the business activity area results in the inability of the family to use any of the critical living areas, such as a bedroom utilized for a business which is not available for sleeping, it will be considered a violation.

Fraud: In each case, the Authority will consider which family members were involved, the circumstances, and any hardship that might be caused to innocent members. In the event of false citizenship claims, the Authority will give the family member the opportunity to elect not to contend their status in lieu of termination of the entire family.

### **C. CRIMINAL ACTIVITY POLICY**

Under the Fair Chance in Housing Act (FCHA), an applicant for admission to the Housing Choice Voucher (Section 8) Program must be given a **Conditional Offer of a Voucher** prior to the Authority performing a criminal background screening except that the Authority must first determine if the applicant has a conviction for the manufacture or production of methamphetamine on the premises of federally-assisted housing and whether the applicant has a lifetime registration requirement under any State sex offender registration program.

Any applicant for admission to the Housing Choice Voucher (Section 8) Program that has been evicted from public housing or any Section 8 rental assistance programs for criminal activity in accordance with the Fair Chance in Housing Act, is ineligible for admission to

the Section 8 rental assistance programs from a period of one (1) year up to six (6) years depending upon the criminal conviction, unless forever banned as mandated by HUD. The Authority must conduct an **Individualized Assessment** when considering to withdraw the conditional offer of a voucher. The Individualized Assessment must consider the following:

- a) Nature and severity of the offense(s);
- b) Applicant's age at the time of the offense(se);
- c) How recently the offense(s) occurred;
- d) Any information the applicant provided in their favor since the offense(s);
- e) If the offense(s) happened again in the future, whether that would impact the safety of other tenants or property; and
- f) Whether the offense(s) happened on, or was connected to property that the applicant had rented or leased.

If the Authority decides to take action against the applicant after the Individualized Assessment, the Authority will follow the FCHA, and other applicable laws, when considering whether to withdraw the conditional offer of a voucher for criminal activity, as shown by a criminal record. Factors considered include performing an Individualized Assessment, providing an opportunity for the applicant to dispute the accuracy and relevance of information and to provide evidence of rehabilitation.

### **PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, AND HUMAN TRAFFICKING**

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

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

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

#### **Notification**

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



## BHA Policy

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

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

However, a Section 8 owner or landlord may bifurcate a lease or remove a member from the lease, without regard to whether they are a signatory to the lease, in order to evict, remove, terminate occupancy rights, or assistance to any individual who is a tenant or lawful occupant and engages in acts of physical violence against family members.

If the lease is bifurcated under VAWA, any remaining tenants will not be denied portability to a unit located in another jurisdiction so long as they have complied with all other requirements of the Section 8 program. The participant victim is also eligible for an emergency transfer if there is the threat of imminent harm from further violence if they remain in the same dwelling unit. See the full VAWA policy and procedures for additional information, as attached.

The BHA will include in its notice of denial the VAWA information described in section 16 of this plan as well as including a copy of the form HUD-5382. The BHA will request in writing that an applicant wishing to claim protection under VAWA notify the BHA within 14 business days.

## **Documentation**

### *Victim Documentation [24 CFR 5.2007]*

## BHA Policy

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the BHA will request in writing that the applicant provide documentation supporting the claim in accordance with this section

### *Perpetrator Documentation*

## BHA Policy

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

A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit

Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to their belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

### **D. PROCEDURES FOR NON-CITIZENS [24 CFR 5.514, 5.516, 5.518]**

**Termination due to Ineligible Immigrant Status:** Assistance may not be terminated while verification of the participant family's eligible immigration status is pending. Participant families in which all members are neither U.S. citizens nor eligible immigrants must have their assistance terminated. They must be given an opportunity for an informal hearing.

**Temporary Deferral of Termination of Assistance:** Ineligible families who were participants as of June 19, 1995, may request a temporary deferral of termination of assistance in order to allow time to locate affordable housing and thereby preserve the family.

**Criteria for Approving Temporary Deferral of Termination of Assistance:** The Authority will grant temporary deferral so long as the family makes reasonable efforts to find affordable housing. Affordable housing is defined as housing that is standard based on HQS of appropriate size based on HQS, and for which the rent plus utilities is no more than twenty five percent (25%) greater than the Authority calculated Total Tenant Payment. To determine whether a family is eligible for temporary deferral of termination of assistance, or for a renewal of temporary deferral of termination of assistance, the Authority will:

- Calculate Total Tenant Payment plus twenty five (25%) for the family, and compare this amount to the data in its rent reasonableness survey for the unit size. If the Authority's data indicates that units are not available at the affordable rent, the deferral will be renewed.
- If the Authority determines that the vacancy rate for affordable housing is less than five percent (5%) in its jurisdiction, it will accept a written statement from the family that they have been unable to find affordable housing.
- Require a search record to document the family's efforts to locate housing before

granting or extending temporary deferral of termination of assistance.

- Conduct market studies to determine the availability of affordable housing and, if the vacancy rate in affordable housing is less than five percent (5%), the Authority may continue temporary deferral of termination of assistance.
- Automatically grant and extend temporary deferral of termination of assistance so long as the market for affordable housing is limited in the jurisdiction.

**Length of Deferral:** The initial temporary deferral is granted for an interval not to exceed six months. Additional deferrals can be made up to a maximum of three years, if the initial deferral was granted prior to 11/29/96. For deferrals granted after 11/29/96, additional deferrals may be made up to an aggregate total of eighteen (18) months. A notice is sent to the family at the beginning of each deferral period reminding them of their ineligibility for full assistance and their responsibility to seek other housing.

The family will be notified in writing sixty (60) days before the end of the maximum deferral period that there cannot be another deferral, and will be offered the option of prorated assistance if they are a mixed family and have made a good-faith effort to locate affordable housing.

**False or Incomplete Information:** When the Authority has clear, concrete, or substantial documentation (such as a permanent resident card or information from another agency) that contradicts the declaration of citizenship made by an applicant or participant, an investigation will be conducted and the individual given an opportunity to present relevant information.

If the individual is unable to verify their citizenship, the Authority may give him/her an opportunity to provide a new declaration as an eligible immigrant or to elect not to contend their status. The Authority will then verify eligible status, deny, terminate, or prorate as applicable. The Authority will deny or terminate assistance based on the submission of false information or misrepresentations.

**Procedure for Denial or Termination:** If the family (or any member) claimed eligible immigrant status and the CIS primary and secondary verifications failed to document the status, the family may make an appeal to the CIS and request a hearing with the Authority either after the CIS appeal or in lieu of the CIS appeal.

Kindly provide the Authority a copy of the written request of appeal as well as proof of mailing. The CIS will issue a written decision and the family is encouraged to provide the Authority with a copy of the CIS decision upon receipt.

After the Authority has made a determination of ineligibility, the family will be notified of the determination and the reasons and informed of the option for prorated assistance (if applicable) or, for participants who qualify, for Temporary Deferral of Termination of Assistance.

**E. ZERO ASSISTANCE TENANTS**

**Old Contracts:** For contracts which were effective prior to 10/2/95, the Authority is liable for unpaid rent and damages if the family vacates during the allowable twelve (12) months after the last HAP payment. The Authority must perform all of the functions normally required, such as reexaminations and inspections. The participant will be notified of the right to remain on the program at \$0 assistance for twelve (12) months. If the family is still in the unit after twelve (12) months, the assistance will be terminated.

**New Contracts:** For contracts effective after 10/2/95, the Authority has no liability for unpaid rent or damages, and the family may remain in the unit at \$0 assistance for up to one hundred eighty (180) days after the last HAP payment. If the family is still in the unit after one hundred eighty (180) days, the assistance will be terminated. If within the one hundred eighty (180) day timeframe an owner rent increase or a decrease in the Total Tenant Payment cause the family to be eligible for a housing assistance payment, the Authority will resume assistance payments for the family.

In order for a family to move to another unit during the one hundred eighty (180) days, the rent for the new unit would have to be high enough to necessitate a housing assistance payment.

**F. OPTION NOT TO TERMINATE FOR MISREPRESENTATION**

If the family has misrepresented any facts that caused the Authority to overpay assistance, the Authority may choose not to terminate and may offer to continue assistance provided that the family executes a Repayment Agreement and makes payments in accordance with the agreement or reimburses the Authority in full.

**G. MISREPRESENTATION IN COLLUSION WITH OWNER**

If the family is willingly and knowingly commits fraud or is involved in any other illegal scheme with the owner, the Authority may deny or terminate assistance. In making this determination, the Authority will carefully consider the possibility of overt or implied intimidation of the family by the owner and the family's understanding of the events.

**H. MISSED APPOINTMENTS AND DEADLINES**

It is a Family Obligation to supply information, documentation, and certification as needed for the Authority to fulfill its responsibilities. The Authority schedules appointments and sets deadlines in order to obtain the required information. The Obligations also require that the family allow the Authority to inspect the unit and appointments are made for this purpose.

An applicant or participant who fails to keep an appointment, or to supply information required by a deadline without notifying the Authority may be sent a Notice of Denial or Termination of Assistance for failure to provide required information, or for failure to allow the Authority to inspect the unit. The family will be given information about the requirement to keep appointments, and the number of times appointments will be rescheduled as specified in this Plan. Appointments will be scheduled and time

requirements will be imposed for the following events and circumstances:

- Eligibility for Admissions
- Verification Procedures
- Voucher Issuance and Briefings
- Housing Quality Standards and Inspections
- Re-certifications
- Informal Reviews

Acceptable reasons for missing appointments or failing to provide information by deadlines are for a medical emergency, incarceration or a family emergency.

**Procedure when Appointments are Missed or Information not Provided:** For most purposes in this Plan, the family will be given one opportunity before being issued a notice of termination or denial for breach of a family obligation. After issuance of the termination notice, if the family offers to correct the breach within the time allowed to request a hearing the notice may be rescinded if the family offers to cure and the family does not have a history of non-compliance.

## Chapter 17

### INTRODUCTION

It is the policy of the Authority to recruit owners to participate in the Program, and to provide owners with prompt and professional service in order to maintain an adequate supply of available housing throughout the jurisdiction of the Authority. The regulations define when the Authority must disallow an owner participation in the Program, and they provide the Authority discretion to disapprove or otherwise restrict the participation of owners in certain categories. This Chapter describes the criteria for owner disapproval, and the various penalties for owner violations.

#### **A. DISAPPROVAL OF OWNER**

The owner does not have a right to participate in the Program. For purposes of this section, "owner" includes a principal or other interested party. The Authority will disapprove the owner for the following reasons:

- HUD or other agency directly related has informed the Authority that the owner has been disbarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.
- HUD has informed the Authority that the federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements and such action is pending.
- HUD has informed the Authority that a court or administrative agency has determined that the owner has violated the Fair Housing Act or other federal equal opportunity requirements.
- The owner has violated obligations under a housing assistance payments contract under Section 8 of the 1937 Act (42 U.S.C. 1437f).
- The owner has committed fraud, bribery or any other corrupt act in connection with any federal housing program.
- The owner has engaged in drug trafficking.
- 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 renting units that fail to meet State or local housing codes.
- The owner has not paid State or local real estate taxes, fines or assessments.
- Water and sewage bills.
- The owner refuses (or has a history of refusing) to evict families for drug-related or violent criminal activity, or for activity that threatens the health, safety or right of

peaceful enjoyment of the (1) premises by Tenants, or (2) the residences by neighbors in the immediate vicinity of the premises of Authority employees or of owner employees or other persons engaged in management of the housing.

- Owner has a conflict of interest as described in HUD regulation 24 CFR 982.161(a) and would therefore be unable to enter into a contract with Authority; or owner is employed by Authority as a member of the Section 8 Program staff or is a Authority Commissioner.

**B. OWNER RESTRICTIONS AND PENALTIES [24 CFR 982.302 (a)(8), 982.453]**

If an owner commits fraud or abuse or is guilty of frequent or serious contract violations, the Authority will restrict the owner from future participation in the program for a period of time commensurate with the seriousness of the offense. The Authority may also terminate some or all contracts with the owner.

Before imposing any penalty against an owner the Authority will review all relevant factors pertaining to the case, and will consider such factors as the owner's record of compliance and the number of violations.

The Authority guidelines for restrictions are contained in the table below:

<b>DISAPPROVAL OF OWNERS/PARTICIPATION RESTRICTIONS</b>	
<b><u>Breach</u></b>	<b><u>Penalty</u></b>
HUD notification of owner debarment/suspension	Termination
HUD notification of violation of fair housing/federal equal opportunity	Termination
Violation of contract obligations	Termination
Owner fraud, bribery or other corrupt act in federal housing program	Termination
Owner engaged in drug trafficking	Termination
History of noncompliance with HQS History of renting units below code	Termination
State/local real estate taxes, fines or assessments	Termination
	Termination

**C. OTHER REMEDIES FOR OWNER VIOLATIONS**

**Overpayments:** If the landlord has been overpaid as a result of fraud, misrepresentation or violation of the Contract, the Authority may terminate the Contract and will arrange for restitution to the Authority and/or family as appropriate. The Authority will make every effort to recover any overpayments made as a result of landlord fraud or abuse. Payments otherwise due to the owner may be debited in order to repay the Authority or the tenant, as applicable.

**D. HAP CONTRACT TERMINATION**

The Housing Assistance Payments (HAP) Contract is the Contract between the owner and the Authority which defines the responsibilities of both parties. The HAP Contract can be

terminated by the Authority and by the owner. The term of the HAP Contract is the same as the term of the lease between the owner and the Section 8 participant. The Authority can

terminate the HAP Contract due to repeated failure by the owner to maintain the apartment according to HQS standards; for neglect of the property; and for material breach of the HCVP Section 8 rules and regulations.

Upon termination of the HAP Contract, no future payments will be made to the owner by the Authority on behalf of the family after the month in which the HAP Contract is terminated. The owner must reimburse the Authority for any payments made in error after termination of the HAP Contract. If the family continues to occupy the apartment after the HAP Contract is terminated, the family chooses to do so without rental assistance from the Authority. If the family meets the criteria for a move with continued assistance, the family may lease-up in another apartment. The HAP Contract for the new apartment may begin during the month in which the family moved from the former apartment.

**Termination by the Owner:** If the owner wishes to terminate the lease, the owner is required to evict using the notice procedures in accordance with HUD regulations and under New Jersey law. The owner must provide the Authority with a copy of the eviction notice and provide the tenant with a written notice specifying the grounds for termination of tenancy. If the owner has begun eviction proceedings and the family continues to reside in the apartment, the Authority must continue to make Housing Assistance Payments to the owner until the owner has obtained a court judgment or other legal process to evict the tenant.

**Termination by the Authority:** The Authority will terminate the HAP Contract to the owner when the lease terminates or when the Authority terminates program assistance for the family or if the owner has breached the HAP Contract. The Authority will also terminate the HAP Contract if the family is required to move or if sufficient funding is no longer available under the ACC.



## Chapter 18

### CLAIMS, MOVE-OUT AND CLOSE-OUT INSPECTIONS (For Contracts Effective Before October 2, 1995)

#### INTRODUCTION

This Chapter describes the Authority's policies, procedures and standards for servicing Contracts which were effective before October 2, 1995. Voucher Contracts in this category have provisions for the Authority's liability to owners when families move out. There may be move-out inspections of units with contracts effective on or after October 2, 1995.

#### A. OWNER CLAIMS

Vacancy loss cannot be claimed in the Housing Choice Voucher Program after the tenant has vacated the unit. Owner claims for payment for unpaid rent, damages, or vacancy loss will be reviewed for accuracy and completeness and compared with records in the file. The Authority establishes standards by which to evaluate claims, but the burden of proof rests with the owner.

If vacancy loss is claimed, the Authority will ascertain whether or not the family gave proper notice of its intent to move. The file will also be reviewed to verify owner compliance at the time the contract was terminated.

#### B. UNPAID RENT [24 CFR 982.451 (iii)]

Unpaid rent only applies to the tenant's portion of rent while the tenant is in residence under the assisted lease. It does not include the tenant's obligation for rent beyond the termination date of the HAP Contract. Separate agreements are not considered a tenant obligation under the lease and the Authority will not reimburse the owner for any claims under these agreements.

#### C. MOVE-OUT AND CLOSE-OUT INSPECTIONS

Move-out inspections are performed prior to the tenant vacating the unit. These inspections are performed to assess the condition of the unit, not to evaluate the HQS. Vacate inspections will be conducted by Authority inspectors. The Authority may conduct a move-out inspection on tenant's request if the owner does not also request an inspection.

The Authority's initial inspection of the unit will include a "conditions" report which will be compared to the conditions found during the move-out inspection. The owner must notify the Authority of the move-out and request an inspection within forty-eight (48) hours of learning of the move-out in order to submit a claim for damages. A damage claim will not be approved unless the move-out inspection is requested and completed prior to any work being done. If the contract was terminated due to owner breach, or the owner was in violation of the contract at the time that it was terminated, there will be no entitlement to claims and therefore no inspection.

The owner and tenant will be notified of the date and time of the inspection. If the owner is not present, the move-out inspection may be rescheduled.

**D. PROCESSING CLAIMS**

Any amount owed by the tenant to the owner for unpaid rent or damages will first be deducted from the maximum security deposit which the owner could have collected under the Program rules. If the maximum allowable security deposit is insufficient to reimburse the owner for the unpaid tenant rent or other amounts which the family owes under the lease, the participant will be responsible for paying damages.

If the owner claims vacancy loss, the security deposit that s/he collected or could have collected will be deducted from the vacancy loss claim. The Authority reviews claims for unpaid rent, damages, or vacancy loss and makes a preliminary determination of amount payable. The family is informed that a claim is pending (notice sent to last known address). The notification will state the preliminarily determined amount, the type of claim, and describe the procedure for contesting the claim.

The Authority will offer the family seven (7) business days to contest the claim. If the family disputes the claim, the Authority may schedule an informal meeting with the owner and tenant in order to resolve the differences. The Authority may schedule a Claim Review. If the family misses the Claim Review, another will not be scheduled unless there are extenuating circumstances. At the Claim Review, the amount and type of claim will be discussed with the family. If the family agrees with the amount and type of claim, the family will be offered a Repayment Agreement. If the family does not agree to sign a Payment Agreement, the Authority will process the account for collection. If the family demonstrates that the claim, or parts of it, is invalid, the Authority will adjust the amount. The Authority may offer the tenant an opportunity for an Informal Hearing regarding the claim if disputes cannot be resolved.

After a determination has been made, the Authority will notify the family in writing of the decision. If it has been determined that the family owes money, the Authority will pursue collection to repay either in a lump sum or through a payment agreement. The notice will warn the family that their assistance may be terminated and they may be denied future participation in the program if they do not reimburse the landlord as required.

**Other Requirements for Claims Processing:** The Authority will require proof that the owner has complied with State and local laws applicable to security deposits before making payment on any claim. All notices to tenants during the processing of a claim must include proof of mailing or of personal delivery.

Costs of filing eviction to remove the tenant or any other legal fees, may not be reimbursed. No claims will be paid for a unit which is vacant as the result of the landlord voluntarily moving a family to another unit owned by the same landlord. All unpaid rent, damage, and vacancy

loss claim forms must be fully complete when they are submitted, and they must be submitted within five (5) business days of the date the owner learned of the move-out.

## Chapter 19

### OWNER OR FAMILY DEBTS TO THE HOUSING AUTHORITY

#### INTRODUCTION

This Chapter describes the Authority's policies for the recovery of monies which have been overpaid for families, and to owners. It describes the methods that will be utilized for collection of monies and the guidelines for different types of debts. It is the Authority's policy to meet the informational needs of owners and families, and to communicate the program rules in order to avoid owner and family debts. Before a debt is assessed against a family or owner, the file must contain documentation to support the Authority's claim that the debt is owed. The file must further contain written documentation of the method of calculation, in a clear format for review by the owner, the family or other interested parties.

When families or owners owe money to the Authority, the Authority will make every effort to collect it. The Authority will use a variety of collection tools to recover debts including, but not limited to: requests for lump sum payments; civil suits; repayment agreements; salary garnishments; collection agencies; credit bureaus; and income tax set-off programs.

**Program Fraud:** HUD's definition of Program fraud and abuse is a single act or pattern of actions that: "Constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead, and that results in payment of Section 8 program funds in violation of Section 8 Program requirements." If a family owes an amount that equals or exceeds \$10,000 as a result of Program fraud, the case will be referred to the HUD Inspector General and Authority legal counsel. Where appropriate, the Authority will refer the case for criminal prosecution.

**Family Error/Late Reporting:** Families who owe money to Authority due to program fraud or the family's failure to report increases in income will be required to repay in accordance with the guidelines in the Repayment section of this Chapter.

#### A. **REPAYMENT AGREEMENT FOR FAMILIES**

A Repayment Agreement as used in this Plan is a document entered into between the Authority and a person or entity who owes a debt to the Authority. It is similar to a promissory note, but contains more details regarding the nature of the debt, the terms of repayment, any special provisions of the agreement, and the remedies available to the Authority upon default of the agreement. There is no maximum amount for which the Authority will enter into a repayment agreement with a family. The maximum length of time the Authority will enter into a repayment agreement with a family is twelve (12) months. The minimum monthly amount of monthly payment for any repayment agreement is twenty-five (\$25.00.).

**Late Payments:** A payment will be considered to be in arrears if the payment is not received by the close of the fifth (5<sup>th</sup>) business day. If the family's repayment agreement is in arrears, the Authority may:

- Require the family to pay the balance in full; or
- Pursue civil collection of the balance due; or
- Terminate the housing assistance; or
- Grant an extension; or
- Amend the agreement

If the family requests a move to another unit and has a repayment agreement in place for the payment of an owner claim, and the repayment agreement is not in arrears and the family will be permitted to move. If the family requests a move to another unit and is in arrears on a repayment agreement for the payment of an owner claim the family will be required to pay the balance in full or be terminated from the program.

If the family repays the past due amount, they may be permitted to move. There are some circumstances in which the Authority will not enter into a repayment agreement. They are:

- If the family already has a Repayment Agreement in place.
- If the Authority determines that the family committed program fraud.
- If the family has already violated a prior repayment agreement.

**Guidelines for Repayment Agreements:** Repayment Agreements will be executed between the Authority and the head of household and spouse. Monthly payments may be decreased in cases of hardship with the prior notice of the family, verification of the hardship, and the approval of the Executive Director.

No move will be approved until the debt is paid in full unless the move is the result of the following causes, and the Repayment Agreement is current:

- Family size exceeds the HQS maximum occupancy standards
- The HAP contract is terminated due to owner non-compliance or opt-out
- A natural disaster

**Additional Monies Owed:** If the family has a Repayment Agreement in place and incurs an additional debt to the Authority:

- The Authority will not enter into more than one Repayment Agreement at a time with the same family
- Additional amounts owed by the family will be added to the existing repayment agreement
- If a Payment Agreement is in arrears more than thirty (30) days, any new debts must be paid in full

**B. DEBTS OWED FOR CLAIMS [24 CFR 792.103, 982.552 (b)(6-8)]**

If a family owes money to the Authority for claims paid to an owner, the Authority may enter into a Repayment Agreement.

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

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

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

### BHA Policy

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

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

## **C. OWNER DEBTS TO THE AUTHORITY**

If the Authority determines that the owner has retained Housing Assistance or Claim Payments that the owner is not entitled to, the Authority may reclaim the amounts from future Housing Assistance or Claim Payments owed the owner for any units under contract. If future Housing Assistance or Claim Payments are insufficient to reclaim the amounts owed, the Authority may:

- Require the owner to enter into a repayment agreement for the amount owed **or** pay the amount in full in sixty (60) days
- Pursue collections through the local court system
- Restrict the owner from future participation

**D. WRITING OFF DEBTS**

Debts will be written off if:

- The debtor's whereabouts are unknown and the debt is more than one (1) year old.
- A determination is made that the debtor is judgment proof.
- The debtor is deceased.
- The debtor is confined to an institution indefinitely or for more than (1) year.
- The amount is less than five hundred dollars (\$500.00) and the debtor cannot be located.

## Chapter 20

### COMPLAINTS AND APPEALS

#### INTRODUCTION

The informal hearing requirements defined in HUD regulation are applicable to participating families who disagree with an action, decision, or inaction of the Authority. This Chapter describes the policies, procedures and standards to be used when families disagree with an Authority decision. The procedures and requirements are explained for preference denial meetings, informal reviews and hearings. It is the policy of the Authority to ensure that all families have the benefit of all protections due to them under the law.

HUD's Office of General Counsel issued a memo on April 4, 2016, regarding the application of Fair Housing Act standards to the use of criminal records. This memo states that a BHA violates the Fair Housing Act when their policy or practice has an unjustified discriminatory effect, even when the BHA had no intention to discriminate. Where a policy or practice that restricts admission based on criminal history has a disparate impact on a particular race, national origin, or other protected class, that policy or practice is in violation of the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the BHA, or if that interest could be served by another practice that has a less discriminatory effect [OGC Memo 4/4/16]. HUD codified this stance on disparate impact and discriminatory effects in a final rule dated March 31, 2023. In doing so, HUD also standardized its long-practiced three-step approach to assessing burdens of proof.

#### A. COMPLAINTS TO THE HOUSING AUTHORITY

The Authority will respond promptly to complaints from families, owners, employees, members of participants, participants, and members of the public. All complaints will be documented. The Authority does not require that complaints other than HQS violations be put in writing. HQS complaints may be reported by telephone.

##### Categories of Complaints:

1. Complaints from families - a family disagrees with an action or inaction of the Authority or owner they will be referred to the tenant interviewer.
2. Complaints from owners - if an owner disagrees with an action or inaction of the Authority or a family.
3. Complaints from staff - if a staff person reports an owner or family either violating or not complying with program rules.
4. Complaints from the general public - complaints or referrals from persons in the community in regard to the Authority, a family or an owner.

The Authority hearing procedures will be provided to families in the briefing packet

**B. PREFERENCE DENIALS [24 CFR 982.207]**

When the Authority denies a preference to an applicant, the family will be notified in writing of the specific reason for the denial and offered the opportunity for a meeting with Authority staff to discuss the reasons for the denial and to dispute the Authority's decision. The person who conducts the meeting must be any officer or employee of the Authority including the person who made the decision.

**C. INFORMAL REVIEW AND PROCEDURES FOR APPLICANTS [24 CFR 982.54 (d) (12), 982.554]**

**Informal Review:**

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 [24 CFR 982.554(a), (c) and (d) (12)]**

The BHA 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 BHA 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

Other decisions by the BHA:

- Qualification of preference
- Participation in the program

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the BHA
- General policy issues or class grievances
- A determination of the family unit size under the BHA subsidy standards
- A BHA determination not to approve an extension of a voucher term
- A BHA determination not to grant approval of the tenancy
- A BHA determination that the unit is not in compliance with the HQS
- A BHA determination that the unit is not in accordance with the HQS due to family size or composition



## BHA Policy

The BHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the BHA 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.

### **Notice to the Applicant [24 CFR 982.554(a)]**

When the Authority determines that an applicant is ineligible for the program, the family must be notified of their ineligibility in writing. The notice must contain: the reason(s) they are ineligible; the procedure for requesting a review if the applicant does not agree with the decision; and, the time limit for requesting a review.

### **Procedure for Informal Review [24 CFR 982.554(b)]:**

A request for an informal review must be received in writing by the close of the business day, no later than seven (7) business days from the date of the Authority's notification of denial of assistance. The informal review will be scheduled within fourteen (14) days from the date the request is received. The informal review may not be conducted by the person who made or approved the decision under review, nor a subordinate of such person. The informal review may be conducted by a staff person who is at the supervisory level or above.

The applicant will be given the option of presenting oral or written objections to the decision. Both the Authority and the family may present evidence and witnesses. The family may use an attorney or other representative to assist them at their own expense.

A Notice of the Review findings will be provided in writing to the applicant within seven (7) business days after the review. It shall include the decision of the review officer, and an explanation of the reasons for the decision. All requests for a review, supporting documentation, and a copy of the final decision will be retained in the family's file.

### **Remote Informal Reviews [Notice PIH 2020-32]**

There is no requirement that informal reviews be conducted in-person and, as such, HUD allows PHAs to conduct all or a portion of their informal review remotely either over the phone, via video conferencing, or through other virtual platforms. If the BHA chooses to conduct remote informal reviews, applicants may still request an in-person informal review, as applicable.

## BHA Policy

The BHA has the sole discretion to require that informal reviews be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the BHA will conduct an informal review remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the informal review, or if the applicant believes an in-person informal review would create an undue health risk. The BHA will consider other reasonable requests for a remote informal review on a case-by-case basis.

### **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal reviews, the platform for conducting remote informal reviews must be accessible to persons with disabilities and the informal review must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal review process. See Chapter 1 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal review is available that appropriately accommodates an individual's disability, the BHA may not hold against the individual their inability to participate in the remote informal review, and the BHA should consider whether postponing the remote informal review to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal reviews, including the use of interpretation services and document translation.

### **Conducting Remote Informal Reviews**

The BHA must ensure that the lack of technology or inability to use technology for remote informal reviews does not pose a disadvantage to families that may not be apparent to the BHA. The BHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal review and, if the family does not have the proper

technology to fully participate, either postpone the informal review or provide an alternative means of access.

As with in-person informal reviews, the BHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal review. The family must also be provided with an accessible means by which to transmit their own evidence.

The BHA must ensure that the applicant has the right to hear and be heard. All BHA policies and processes for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations at 24 CFR 982.554 and guidance specified in Notice PIH 2020-32.

### BHA Policy

The BHA will conduct remote informal reviews via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal review will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal review will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to scheduling the remote review, the BHA will provide the family with login information and/or conferencing call-in information and an electronic and/or physical copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the informal review and request the family notify the BHA of any known barriers. The BHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person informal review.

If the informal review is to be conducted remotely, the BHA will require the family to provide any documents directly relevant to the informal review at least 24 hours before the scheduled review through the mail, via email, or text. The BHA will scan and email copies of these documents to the BHA representative the same day.

Documents will be shared electronically whenever possible.

The BHA will ensure that all electronic information stored or transmitted with respect to the informal review is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

**Per the Fair Chance in Housing Act**, after an applicant has been given a Conditional Offer of a Voucher and the offer is withdrawn following an Individualized Assessment as permissible under the FCHA, the Authority must give a written **Notice of Withdrawal** indicating the specific reasons for the withdrawal, and notifying the applicant of the right to request an informal review/appeal of the denial of their application.

The applicant can then request a copy of all the information upon which the Authority relied in making the decision to withdraw the conditional offer of a voucher. The applicant must make the request within thirty (30) days of receiving the Notice of Withdrawal. The Authority must provide the information free of charge within ten (10) days after receiving a timely request.

The applicant may then use that information to request an informal review/appeal, claiming that the Authority violated the FCHA and provide additional information in support of the violation. The Authority must consider and provide a determination based on the new information within thirty (30) days.

**D. INFORMAL HEARING PROCEDURES for PARTICIPANTS [24 CFR 982.555 (a-f), 982.54(d)(13)]**

PHAs must offer an informal hearing for certain BHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the BHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the BHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and BHA policies.

When the Authority makes a decision regarding the eligibility and/or the amount of assistance, applicants and participants must be notified in writing. The Authority will give the family prompt notice of such determinations, which will include:

- The proposed action or decision of the Authority;
- The date the proposed action or decision will take place;
- The family's right to an explanation of the basis for the Authority's decision;
- The procedures for requesting a hearing if the family disputes the action or decision;
- The time limit for requesting the hearing;
- To whom the hearing request should be addressed.

The Authority must provide participants with the opportunity for an informal hearing for decisions related to any of the following Authority determinations:

1. Determination of the family's annual or adjusted income and the computation of the housing assistance payment;
2. A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the BHA utility allowance schedule;
3. Family unit size determination under Authority subsidy standards;
4. Determination that Housing Choice Voucher program family is under-occupied in their current unit and a request for exception is denied;
5. A determination to terminate assistance for a participant family because of the family's actions or failure to act;

6. A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under BHA policy and HUD rules;
7. Determination to terminate a family's FSS Contract, withholds supportive services, or proposes forfeiture of the family's escrow account;
8. Determination to pay an owner claim for damages, unpaid rent or vacancy loss.

The Authority must always provide the opportunity for an informal hearing before termination of assistance. Informal hearings are not required for established policies and procedures and the Authority determinations such as:

- Discretionary administrative determinations by the Authority;
- General policy issues or class grievances;
- Establishment of the Authority schedule of utility allowances for families in the program;
- Authority determination not to approve an extension or suspension of voucher term;
- Authority determination that an assisted unit is not in compliance with HQS (Authority must provide hearing for family breach of HQS because that is a family obligation determination);
- Authority determination that the unit is not in accordance with HQS because of the family size;
- Authority determination to exercise or not exercise any right or remedy against the owner under a HAP contract.

**Notification of Informal Hearing:** It is the Authority's objective to resolve disputes at the lowest level possible, and to make every effort to avoid the most severe remedies. However, if this is not possible, the Authority will ensure that applicants and participants will receive all of the protections and rights afforded by the law and the regulations.

The participant must send a written request for an informal hearing by the close of the business day, no later than 14 days from the date of the Authority letter terminating assistance. The informal hearing will be scheduled within a reasonable time frame (generally within two weeks) from the date the request is received.

When the Authority receives a request for an informal hearing, a hearing shall be scheduled within fourteen (14) business days. The notification of hearing will contain:

1. The date and time of the hearing;
2. The location where the hearing will be held;
3. The family's right to bring evidence, witnesses, legal or other representation at the family's expense;
4. The right to view any documents or evidence in the possession of the Authority upon which the Authority based the proposed action and, at the family's expense, to obtain a copy of such documents prior to the hearing. Such documents or evidence must be received no later than two (2) days before the hearing date.

5. A notice to the family that the Authority will request a copy of any documents or evidence the family will use at the hearing. Such documents or evidence must be received by the authority no later than two (2) days before the hearing date.

**The Authority's Hearing Procedures:** After a hearing date is agreed to, the family may request to reschedule only upon showing "good cause," which is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

If a family does not appear at a scheduled hearing and has not rescheduled the hearing in advance, the family must contact the Authority within forty-eight (48) hours, excluding weekends and holidays. The Authority will reschedule the hearing only if the family can show good cause for the failure to appear. Families have the right to:

- Present written or oral objections to the Authority's determination;
- Examine the documents in the file which are the basis for the Authority's action, and all documents submitted to the Hearing Officer;
- Copy any relevant documents at their expense;
- Present any information or witnesses pertinent to the issue of the hearing;
- Request that Authority staff be available or present at the hearing to answer questions pertinent to the case; and
- Be represented by legal counsel, advocate, or other designated representative at their own expense.

If the family requests copies of documents relevant to the hearing, the Authority will make the copies for the family and assess a charge of 25 cents twenty-five cents per copy. In no case will the family be allowed to remove the file from the Authority's office.

In addition to other rights contained in this Chapter, the Authority has a right to:

- Present evidence and any information pertinent to the issue of the hearing;
- Be notified at least 48 hours if the family intends to be represented by legal counsel, advocate, or another party;
- Examine and copy any documents to be used by the family prior to the hearing;
- Have its attorney present; and
- Have staff persons and other witnesses familiar with the case present.

The informal hearing shall be conducted by the Hearing Officer appointed by the Authority who is neither the person who made or approved the decision, nor a subordinate of that person. The hearing shall concern only the issues for which the family has received the opportunity for the hearing. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings. No documents may be presented which have not been provided to the other party before the hearing if requested by the other party. "Documents" includes records and regulations. The Hearing Officer may ask the family for additional information and/or might adjourn the Hearing in order to reconvene at a later date, before reaching a decision.

If the family misses an appointment or deadline ordered by the Hearing Officer, the action of the Authority shall take effect and another hearing will not be granted. The Hearing Officer will determine whether the action, inaction or decision of the Authority is legal in accordance with HUD regulations and this Administrative Plan based upon the evidence and testimony provided at the hearing. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

A notice of the Hearing decision shall be provided in writing to the Authority and the family within fourteen (14) business days and shall include: a clear summary of the decision and reasons for the decision; if the decision involves money owed, the amount owed; and the date the decision goes into effect.

The Authority is not bound by Hearing Officers determination for the following:

- Matters in which the Authority is not required to provide an opportunity for a hearing;
- Matters that conflict with or contradict HUD regulations or requirements;
- Matters that conflict with or contradict Federal, State or local laws; or
- Matters that exceed the authority of the person conducting the hearing.

The Authority shall send a letter to the participant if it determines the Authority is not bound by the Hearing Officer's determination within fourteen (14) business days. The letter shall

include the Authority's reasons for the decision. All requests for a hearing, supporting documentation and a copy of the final decision will be retained in the family's file.

### **Remote Informal Hearings [Notice PIH 2020-32]**

There is no requirement that informal hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the BHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

### **BHA Policy**

The BHA has the sole discretion to require that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the BHA will conduct an informal hearing remotely upon request as a reasonable accommodation for a person with a disability, if a participant does not have child care or transportation that would enable them to attend the informal hearing, or if the participant believes an in-person hearing would create an undue health risk. The BHA will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

## **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearings must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal hearing process. See Chapter 1 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal hearing is available that appropriately accommodates an individual's disability, the BHA may not hold against the individual their inability to participate in the remote informal hearing, and the BHA should consider whether postponing the remote hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation.

### **Conducting Informal Hearings Remotely**

The BHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the BHA. The BHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, the BHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.



The BHA's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all BHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations at 24 CFR 982.555 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

### BHA Policy

The BHA will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, participants are unable to adequately access the video conferencing platform at any point, or upon request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to scheduling the remote hearing, the BHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify the BHA of any known barriers. The BHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

The BHA will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

### **E. HEARING AND APPEAL PROVISIONS FOR "RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS" [24 CFR Part 5, Subpart E]**

Assistance to the family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on the INS appeal. Assistance to a family may not be terminated or denied while the Authority hearing is pending but assistance to an applicant may be delayed pending the Authority hearing.

**INS Determination of Ineligibility:** If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the Authority must notify the applicant or participant within ten business days of their right to appeal to the INS within thirty days or to request an informal hearing with the Authority either in lieu of or subsequent to the INS appeal.

If the family appeals to the INS, they must give the Authority a copy of the appeal and proof of mailing or the Authority may proceed to deny or terminate. The time period to request an appeal may be extended by the Authority for good cause. The request for an Authority hearing must be made within fourteen days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within fourteen (14) days of receipt of that

notice.

After receipt of a request for an informal hearing, the hearing is conducted as described in Section D of this chapter for both applicants and participants. If the hearing officer decides that the individual is not eligible, and there are no other eligible family members the Authority will:

- Deny the applicant family;
- Defer termination if the family is a participant and qualifies for deferral;
- Terminate the participant if the family does not qualify for deferral.

If there are eligible members in the family, the Authority will offer to prorate assistance or give the family the option to remove the ineligible members. If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide required documentation, the family will be denied or terminated for failure to provide.

Participants whose termination is carried out after temporary deferral may not request a hearing since they had an opportunity for a hearing prior to the termination. Participants whose assistance is prorated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of tenant rent and Total Tenant Payment. Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

**F. MITIGATING CIRCUMSTANCES FOR APPLICANTS/PARTICIPANTS WITH DISABILITIES**

When applicants are denied placement on the waiting list, or the Authority is terminating assistance, the family will be informed that presence of a disability may be considered as a mitigating circumstance during the informal review process.

## Chapter 21

### PROGRAM INTEGRITY

#### INTRODUCTION

The BHA Is committed to ensuring that subsidy funds made available to the BHA are spent in accordance with HUD requirements. This chapter covers HUD and the BHA 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 BHA policies related to preventing, detecting, and investigating errors and program abuse.

**Part II: Corrective Measures and Penalties.** This part describes the corrective measures the BHA must and may take when errors or program abuses are found.

#### **PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE**

##### **A. PREVENTING ERRORS AND PROGRAM ABUSE**

The BHA anticipates that the vast majority of families, owners, and BHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors. To ensure that the BHA's HCV program is administered effectively and according to the highest ethical and legal standards, the BHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

- The BHA will discuss program compliance and integrity issues during the voucher briefing sessions.
- The BHA will provide each applicant and participant with the publication Things You Should Know (HUD-1140-OIG) and Is Fraud Worth It? (HUD-1141-OIG) that explains the types of actions a family must avoid and the penalties for program abuse.
- The BHA will place a warning statement about the penalties for fraud 9as described in the False Statement Act, U.S.C. 1001 and 1010) on key BHA forms and form letters that request information from a family or owner.
- The BHA will provide each applicant and participant with a copy of "What You Should Know about EIV", a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, the Authority will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.
- BHA staff will be required to review and explain the contents of all HUD-and BHA-required forms prior to requesting family member signatures.

For purposes of this chapter the term error refers to an unintentional error or omission. Program abuse or fraud refers to a single act or pattern of actions that constitute a false

statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

## **B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, the BHA will use a variety of activities to detect errors and program abuse.

**Quality Control and Analysis of Data:** Under the Section 8 Management Assessment Program (SEMAP), HUD requires the BHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985].

In addition to the SEMAP quality control requirements, the BHA will employ a variety of methods to detect errors and program abuse. The BHA routinely will use available sources of up-front income verification to, including HUD's EIV System, compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information. The BHA will compare family-reported income and expenditures to detect possible unreported income.

**Independent Audits and HUD Monitoring:** OMB circular A-133 requires all BHA 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 BHA activities and notifies the BHA of errors and potential cases of program abuse. The BHA will see the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the BHA's error detection and abuse prevention efforts.

**Individual Reporting of Possible Errors and Program Abuse:** The BHA will encourage staff, program participants, and the public to report possible program abuse.

## **C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

**When the BHA Will Investigate:** The BHA 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 the BHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member. The BHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

**Consent to Release of Information:** The BHA may investigate possible instances of error or abuse using all available BHA and public records. If necessary, the BHA will require HCV families to give consent to the release of additional information.

**Analysis and Findings:** The BHA will base its evaluation on a preponderance of the evidence collected during its investigation. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence. For each investigation the BHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed to the BHA, and (3) what corrective measures or penalties will be assessed.

**Consideration of Remedies:** All errors and instances of program abuse must be corrected prospectively. Whether the BHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

In the case of family-cause errors or program abuse, the BHA 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 BHA 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:** The BHA will inform the relevant party in writing of its findings and remedies within fifteen (15) business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the BHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable.

## **PART II: CORRECTIVE MEASURES AND PENALTIES**

### **A. SUBSIDY UNDER - OR OVERPAYMENTS**

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) and incorrect utility reimbursement to a family.

**Corrections:** Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the BHA must promptly correct the HAP, family share, and any utility reimbursement prospectively. Increases in the family share will be implemented only after the family has received thirty (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 the BHA or the BHA 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.

## **B. FAMILY-CAUSED ERRORS OR 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 the BHA to use incorrect information provided by a third party.

**Family Reimbursement to BHA:** In the case of family-cause errors or program abuse, the family will be required to repay an excess subsidy received. The BHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 18. If the family fails to repay the excess subsidy, the BHA will terminate the family's assistance in accordance with the policies in Chapter 16.

**BHA Reimbursement to Family:** The BHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is cause by the family.

**Prohibited Actions:** An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the BHA [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 982.522 (c)(iv)];
- Any of the following will be considered evidence of family program abuse;
- Payment to the owner in excess of amounts authorized by the BHA for rent, security deposit, and additional services;
- Offering bribes or illegal gratuities to the BHA Board of Commissioners, employees, contractors, or other BHA representatives;
- Offerings payments or other incentives to the owner or a thirst party as an inducement for the third party to make false or misleading statements to the BHA 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;
- The BHA may determine other actions to be program abuse based upon a preponderance of the evidence, as define, as defined earlier in this chapter.

**Penalties for Program Abuse:** In the case of program abuse caused by a family the BHA may, at its discretion, impose any of the following remedies:

- The BHA may require the family to repay excess subsidy amounts paid by the BHA, as described earlier in this section.
- The BHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in chapter 3 (for applicants) and Chapter 13 (for participants.)
- The BHA may deny or terminate the family’s assistance following the policies set forth in Chapter 3 and Chapter 13 respectively.
- The BHA may refer the family for state or federal criminal prosecution.

**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 BHA:** In all cases of overpayment of subsidy caused by the owner, the owner must repay to the BHA any excess subsidy received. The BHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the BHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13.]. In cases where the owner has received excess subsidy, the BHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

**D. PROHIBITED OWNER ACTIONS**

An owner participating in the HCV program must not:

- Make any false statement to the BHA [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:

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by the BHA;
- 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 the BHA Board of Directors, employees, contractors, or other BHA representatives;
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the BHA;
- Residing in the unit with an assisted family.

**E. OWNER REMEDIES AND PENALTIES**

If an owner commits fraud or abuse or is guilty of frequent or serious contract violations, the Authority will restrict the owner from future participation in the program for a period of time commensurate with the seriousness of the offense. The Authority may also terminate some or all contracts with the owner. Before imposing any penalty against an owner the Authority will review all relevant factors pertaining to the case, and will consider such factors as the owner's record of compliance and the number of violations.

The Authority guidelines for restrictions are contained in the table below:

<b>DISAPPROVAL OF OWNERS/PARTICIPATION RESTRICTIONS</b>	
<b>BREACH</b>	<b>Penalty</b>
HUD notification of owner debarment/suspension	Termination
HUD notification of violation of fair housing/federal equal opportunity	Termination
Violation of contract obligations	Termination
Owner fraud, bribery or other corrupt act in federal housing program	Termination
Owner engaged in drug trafficking	Termination
History of noncompliance with HQS	Termination
History of renting units below code	Termination
State/local real estate taxes, fines or assessments	Termination

**F. OTHER REMEDIES FOR OWNER VIOLATIONS**

**Overpayments:** If the landlord has been overpaid as a result of fraud, misrepresentation or violation of the Contract, the Authority may terminate the Contract and will arrange for restitution to the Authority and/or family as appropriate. The Authority will make every effort to recover any overpayments made as a result of landlord fraud or abuse. Payments otherwise due to the owner may be debited in order to repay the Authority or the tenant, as applicable.

**Remedies and Penalties:** When the BHA determines that the owner has committed program abuse, the BHA 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 17.
- Terminate the HAP contract (See Chapter 15.)
- Bar the owner from future participation in any BHA programs.
- Refer the case to state or federal officials for criminal prosecution as described.



## **G. BHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of BHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a BHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the BHA personnel policy.

BHA-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.

**Repayment to the BHA:** Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by BHA staff [HCV GB. 22-12.].

**BHA Reimbursement to Family or Owner:** The BHA must reimburse a family for any underpayment of subsidy, regardless of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from the BHA's administrative fee reserves [HCV GB p. 22-12.].

**Prohibited Activities:** Any of the following will be considered evidence of program abuse by BHA 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 the BHA
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of BHA 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

## **H. CRIMINAL PROSECUTION**

When the BHA determines that program abuse by an owner, family, or BHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the BHA 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 HCV program will be referred to the appropriate local, state, or federal entity.

## **I. FRAUD AND PROGRAM ABUSE RECOVERIES**

The BHA may retain a portion of program fraud losses that the BHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163]. The BHA 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 BHA to retain the greater of:

- Fifty percent (50%) 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 BHA 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 BHA related to the collection, these costs must be deducted from the amount retained by the BHA.

## GLOSSARY

### A. ACRONYMS USED IN SUBSIDIZED HOUSING

<b>AAF</b>	Annual Adjustment Factor. A factor published by HUD in the Federal Register which is used to compute annual rent adjustments.
<b>ACC</b>	Annual Contributions Contract
<b>BR</b>	Bedroom
<b>CDBG</b>	Community Development Block Grant
<b>CFR</b>	Code of Federal Regulations. Commonly referred to as "the regulations". The CFR is the compilation of Federal rules which are first published in the Federal Register and define and implement a statute.
<b>CMIV</b>	Computer Matching Income Verification
<b>CPI</b>	Consumer Price Index. CPI is published monthly by the Department of Labor as an inflation indicator.
<b>CR</b>	Contract Rent
<b>EIV</b>	Enterprise Income Verification
<b>ELI</b>	Extreme Low Income
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FHA</b>	Federal Housing Administration
<b>FHEO</b>	Fair Housing and Equal Opportunity
<b>FICA</b>	Federal Insurance Contributions Act - Social Security taxes
<b>FmHA</b>	Farmers Home Administration
<b>FMR</b>	Fair Market Rent
<b>FY</b>	Fiscal Year
<b>FYE</b>	Fiscal Year End
<b>GAO</b>	Government Accounting Office
<b>GFC</b>	Gross Family Contribution. Note: Has been replaced by the term Total Tenant Payment (TTP).
<b>GR</b>	Gross Rent

<b>HA</b>	Housing Agency.
<b>HAP</b>	Housing Assistance Payment
<b>HAP Plan</b>	Housing Assistance Plan
<b>HCDA</b>	Housing and Community Development Act
<b>HCVP</b>	Housing Choice Voucher Program
<b>HQS</b>	Housing Quality Standards
<b>HUD</b>	The Department of Housing and Urban Development or its designee.
<b>HURRA</b>	Housing and Urban/Rural Recovery Act of 1983
<b>IG</b>	Inspector General
<b>IT</b>	Income Targeting
<b>IGR</b>	Independent Group Residence
<b>IPA</b>	Independent Public Accountant
<b>IRA</b>	Individual Retirement Account
<b>MSA</b>	Metropolitan Statistical Area established by the U.S. Census Bureau
<b>PHA</b>	Public Housing Agency
<b>PMSA</b>	A Primary Metropolitan Statistical Area established by the U.S. Census Bureau
<b>PS</b>	Payment Standard
<b>QC</b>	Quality Control
<b>RAP</b>	Rental Assistance Payment
<b>REAC</b>	Real Estate Assessment Center
<b>RFP</b>	Request for Proposals
<b>RFP</b>	Request for Proposals
<b>RRP</b>	Rental Rehabilitation Program
<b>SRO</b>	Single Room Occupancy
<b>SSN</b>	Social Security Number
<b>SSMA</b>	Standard Statistical Metropolitan Area. Has been replaced by MSA, Metropolitan Statistical Area.

<b>SWICA</b>	State Wage Information Collection Agencies
<b>TASS</b>	Tenant Assessment Sub-System
<b>TLA</b>	Tenancy Lease Addendum
<b>TR</b>	Tenant Rent
<b>TTP</b>	Total Tenant Payment
<b>UA</b>	Utility Allowance
<b>UIV</b>	Upfront Income Verification
<b>URP</b>	Utility Reimbursement Payment

## **B. GLOSSARY OF TERMS IN SUBSIDIZED HOUSING**

**ABSORPTION** In portability, the point at which a receiving HA stops billing the initial HA for assistance on behalf of a portability family. The receiving HA uses funds available under the receiving HA consolidated ACC.

**ACC RESERVE ACCOUNT (FORMERLY "PROJECT RESERVE").** Account established by HUD from amounts by which the maximum payment to the HA under the consolidated ACC (during an HA fiscal year) exceeds the amount actually approved and paid. This account is used as the source of additional payments for the program.

**ACCESSIBLE (SECTION 504).** When used with the respect to the design, construction, or alteration of a facility other than an individual dwelling unit, means that the facility or a portion of a facility, when designed, constructed, or altered, can be approached, entered, and used by individuals with a physical impairment (handicaps). 1 The phrase accessible to, and usable by, is synonymous with accessible.[24 CFR 8.3] Accessible, when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered, and used by individuals with a physical impairment (handicaps). 1 A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR 8.32 is accessible within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified person with a disability (handicaps)1 (e.g., a current occupant of such a unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person. [24 CFR 8.3]

**ACCESSIBLE ROUTE (ROUTE 504).** A continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by 24 CFR 8.32. An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments. [24 CFR 8.3]

**ADAPTABILITY (SECTION 504).** The ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities (handicaps), 1 or different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed, but the alarms need not be installed, until such time as the unit is made ready for occupancy by a hearing-impaired person. [24 CFR 8.3]

**ADJUSTED INCOME.** Annual income, less allowable HUD deductions.

**ADMINISTRATIVE FEE.** Fee paid by HUD to the HA for administration of the program.

**ADMINISTRATIVE FEE RESERVE (Formerly "Operating reserve").** Account established by HA from excess administrative fee income. The administrative fee reserve must be used for housing purposes.

**ADMISSION.** The effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program. This is the point when the family becomes a participant in the program.

**ALTERATION (SECTION 504).** Any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts, and extraordinary repairs. It does not include normal maintenance or repairs, reproofing, interior decoration, or changes to mechanical systems. [24 CFR 8.3]

**ANNUAL CONTRIBUTIONS CONTRACT (ACC).** A written contract between HUD and an HA. Under the contract HUD agrees to provide funding for operation of the program, and the HA agrees to comply with HUD requirements for the program

**ANNUAL INCOME.** The anticipated total Annual Income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

**ANNUAL INCOME AFTER ALLOWANCES.** The Annual Income (described above) less the HUD-approved allowances.

**APPLICANT.** (or applicant family). A family that has applied for admission to a program, but is not yet a participant in the program.

**"AS-PAID" STATES.** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

**ASSETS.** (See Net Family Assets.)

**ASSISTED TENANT.** A tenant who pays less than the market rent as defined in the regulations. Includes tenants receiving rent supplement, Rental Assistance Payments, or Section 8 assistance and all other 236 and 221 (d)(3) BMIR tenants, except those paying the 236 market rent or 120% of the BMIR rent, respectively.

**AUXILIARY AIDS (SECTION 504).** 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. For example, auxiliary aids for persons with impaired vision may include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids for persons with impaired hearing may include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, notetakers, written materials, and other similar services and devices. [24 CFR 8.3]

**BRIEFING.** A meeting between the owner and the tenant prior to signing the lease during which the owner discusses various topics related to living in the unit. Topics include, but are not limited to, tenant rights, house rules, and lease terms.

**BUDGET AUTHORITY.** An amount authorized and appropriated by the Congress for payment to HAs under the program. For each funding increment in an HA program, budget authority is the maximum amount that may be paid by HUD to the HA over the ACC term of the funding increment.

**CHILD CARE EXPENSES.** Amounts paid by the family for the care of minors under 13 years of age where such care is necessary to enable a family member to be employed or for a household member to further his/her education, or to seek employment.

**CITIZEN.** A citizen or national of the United State. [24 CFR 5.504] (See definition of National.)

**COMPLIANCE REVIEW.** An annual review which is conducted by HUD staff to evaluate a BHAs overall performance in accordance with the required Incentive Based Performance Standards (IBPS) under the Request for Proposal. A review of the BHA files and records is performed.

**COMPUTER MATCHING AGREEMENTS.** The agreements between HUD and the Internal Revenue Service (IRS) and the Social Security Administration (SSA) that allow the matching of data between each entity's database.

**CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT.** (Consolidated ACC). See 24 CFR 982.151.

**CONTIGUOUS MSA.** In portability, an MSA that shares a common boundary with the MSA in which the jurisdiction of the initial HA is located.

**CONTINUOUSLY ASSISTED.** An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program.

**CONTRACT.** (See Housing Assistance Payments Contract.)

**CONTRACT AUTHORITY.** The maximum annual payment by HUD to an HA for a funding increment.

**CONTRACT RENT.** In the Housing Choice Voucher Program, Contract Rent is the total rent paid to the owner, including the tenant payment and the HAP payment from the PHA.

**CURRENTLY ENGAGING IN.** With respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, currently engaging in means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current. [24 CFR 5.853]



**DEDUCTIONS.** In determining adjusted income, the owner must deduct the following from annual income: 1. \$480 for each dependent; 2. \$400 for any elderly family or disabled family; 3. The sum of the following to the extent the sum exceeds 3% of annual income: a. Unreimbursed medical expense of any elderly or disabled family; and b. 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 a disability) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and 4. Any reasonable child care expense necessary to enable the family member to be employed or to further his or her education. [24 CFR 5.611]

**DENIAL OF TENANCY OR ASSISTANCE.** The process of rejecting an applicant's request for either occupancy or assistance because the household does not meet eligibility criteria for the program or the owner's criteria for suitability for tenancy.

**DEPENDENT.** A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a full-time student 18 years of age or over.

**DISABILITY (HANDICAP)<sup>1</sup> (SECTION 504) [as defined for Civil Rights Protections].** Any condition or characteristic that renders an individual a person with disabilities (handicaps). 1 [24 CFR 8.3]

**DISABLED 1 FAMILY.** [Also appears as G – Disabled Family in Figure 3-6.] 1. Families of two or more persons the head of which (or his or her spouse) is a persons with disabilities 1; 2. The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under 24 CFR891, subpart E (Section 202 loans) with the deceased member of the family at the time of his or her death; 3. A single person with disabilities (handicapped person)<sup>1</sup> over the age of 18; or 4. Two or more persons with disabilities (person (1) living together, or one or more such persons living with another person who is determined by HUD, based upon a license physician's certificate provided by the family, to be essential to their care or well-being. [24 CFR 891.505]

**DISABLED FAMILY.** [Also appears as Definition D – Disable family in Figure 3-6.] A family whose head, spouse, or sole member is a person with disabilities (as defined by 24 CFR 5.4030. It may include two or more persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being. [24 CFR 5.403] (See definition of Person with Disabilities as defined for program eligibility purposes.)

**DISABLED HOUSEHOLD.** [Also appears as F – Disabled Household in Figure 3.6] Disabled household means a household composed of: 1. One or more persons at least one of whom is an adult (18 years or older) who has a disability; 2. Two or more persons with disabilities living together, or one or more such persons with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician to be important to their care or well being; or 3. The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part with the deceased member of the household at the time of his or her death. [24 CFR 891.305]

**DISABLED PERSON.** A person who is any of the following:

- (1) A person who has a disability as defined in section 223 of the Social Security Act. (42 U.S.C.423).
- (2) A person who has a physical, mental, or emotional impairment that:  
Is expected to be of long-continued and indefinite duration;  
Substantially impedes his or her ability to live independently; and  
Is of such a nature that ability to live independently could be improved by more suitable housing conditions.
- (3) A person who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

**DISPLACED PERSON.** 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 under federal disaster relief laws.

**DOMICILE.** The legal residence of the household head or spouse as determined in accordance with State and local law.

**DRUG.** A controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). [24 CFR 5.100]

**DRUG-RELATED CRIMINAL ACTIVITY.** The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug. [24 CFR 5.100]

**DRUG TRAFFICKING.** The illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

**ELDERLY FAMILY.** A family whose head or spouse or whose sole member is at least 62 years of age or a Disabled Person as defined in this section or a Handicapped Person as defined in this section or may include two or more elderly, disabled persons living together or one or more such persons living with another person who is determined to be essential to his/her care and wellbeing.

**ELDERLY PERSON.** A person who is at least 62 years old.

**ELGIBLE NONCITIZEN.** A person who has eligible immigration status in one of the following categories: 1. A non-citizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the INA (8 U.S.C. 1101(a)(20) and U.S.C. 1101(a)(15), respectively) [immigrants]. (This category includes a non-citizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161) [special agricultural worker], who has been granted lawful temporary resident state); 2. A non-citizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259); 3. A non-citizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) [refugee status]; pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) [asylum state]; or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7))

before April 1, 1980, because of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity; 4. A non-citizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212 (d)(5) of the INA (8 U.S.C. 1182 (D)(5) [parole status]; 5. A non-citizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) [threat to life or freedom]; 6. A non-citizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) [amnesty granted under INA 245A]; or 7. A non-citizen who is a lawful resident in the United States and its Territories and possessions under section 141 of the Compacts of Free Association between the government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia and Palau (collectively referred to as "the Freely Associated State" (FAS)) [Section 3 (b) of Public Law 106-504]. A nonimmigrant student, while lawfully admitted to the United States, is not eligible.

**ELIGIBILITY INCOME.** May 10, 1984, regulations deleted Eligibility Income, per se, because Annual Income is now for eligibility determination to compare to income limits.

**ELIGIBLE FAMILY (Family).** A family is defined by the HA in the administrative Plan, which is approved by HUD.

**EXCEPTIONAL MEDICAL OR OTHER EXPENSES.** Prior to the regulation change in 1982, this meant medical and/or unusual expenses as defined in Part 889 which exceeded 25% of the Annual Income. It is no longer used.

**EXCEPTION RENT.** In the certificate program an initial rent (contract rent plus any utility allowance) in excess of the published FMR. In the certificate program the exception rent is approved by HUD, or the HA under prescribed conditions, and is used in determining the initial contract rent. In the voucher program the HA may adopt a payment standard up to the exception rent limit approved by HUD for the HA certificate program.

**EXCESS MEDICAL EXPENSES.** Any medical expenses incurred by elderly families only in excess of 3% of Annual Income which are not reimbursable from any other source.

**EXTREMELY LOW INCOME.** Very low income family whose income does not exceed the higher of: 30% of the area median or the poverty rate

**FAIR HOUSING ACT.** Title VIII of the Civil Rights Act, 42 U.S.C. 3601. The Fair Housing Act is a broad statute that prohibits discrimination based upon race, color, religion, sex, national origin, disability, or familial status in most housing and housing-related transaction.

**FAIR HOUSING AND EQUAL.** Office in HUD responsible for enforcing the requirements of the Fair Housing Act, as amended, including the provision prohibiting discrimination in selling or renting housing.

**FAIR MARKET RENT (FMR).** Rents established by HUD for existing housing according to bedroom sizes, published in the Federal Register at 24 CFR Part 888. The fair market rent, including the cost of utilities (except telephone), is the amount required in the housing market to obtain privately owned, decent, safe, and sanitary housing of modest nature with suitable amenities.

**FAMILY.** The applicant must qualify as a family as defined by the HA.

**FAMILY OF VETERAN OR SERVICEPERSON.** A family is a "family of veteran or serviceperson" when:

1. The veteran or serviceperson (a) is either the head of household or is related to the head of the household; or (b) is deceased and was related to the head of the household, and was a family member at the time of death.
2. The veteran or serviceperson, unless deceased, is living with the family or is only temporarily absent unless s/he was (a) formerly the head of the household and is permanently absent because of hospitalization, separation, or desertion, or is divorced; provided, the family contains one or more persons for whose support s/he is legally responsible and the spouse has not remarried; or (b) not the head of the household but is permanently hospitalized; provided, that s/he was a family member at the time of hospitalization and there remain in the family at least two related persons.

**FAMILY SELF-SUFFICIENCY PROGRAM (FSS PROGRAM).** The program established by an HA to promote self-sufficiency of assisted families, including the provision of supportive services.

**FEDERAL FINANCIAL ASSISTANCE (SECTION 504).** Any assistance provided or otherwise made available by the Department through any grant, loan, contract, or any other arrangements, in the form of: 1. funds; 2. Services of Federal personnel; or 3. Real or personal property or any interest in or use of such property, including: a. Transfers or leases of the property for less than fair market value or for reduced consideration; and b. Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government. Federal financial assistance includes community development funds in the form of proceeds from loans guaranteed under Section 108 of the Housing and Community Development Act of 1974, as amended, but does not include assistance made available through direct federal procurement contracts or payments made under these contracts of insurance or guaranty. [24 CFR 8.3]

**FMR/EXCEPTION RENT LIMIT.** The section 8 existing housing fair market rent published by HUD headquarters or any exception rent. In the certificate program the initial contract rent for a dwelling unit plus any utility allowance may not exceed the FMR/exception rent limit (for the dwelling unit or for the family unit size). In the voucher program the HA may adopt a payment standard up to the FMR/exception rent limit.

**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 carrying a subject load that is considered full time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

**FUNDING INCREMENT.** Each commitment of budget authority by HUD to an HA under the consolidated annual contributions contract for the HA program.

**GROSS FAMILY CONTRIBUTION.** Changed to Total Tenant Payment.

**GROSS RENT.** The sum of the Contract Rent and the utility allowance. If there is no utility allowance, Contract Rent equals Gross Rent.

**HANDICAP ASSISTANCE.** Anticipated costs for care attendants and auxiliary apparatus for handicapped or disabled family members which enable a family member (including the handicapped family member) to work.

**HAP CONTRACT.** (See Housing Assistance Payments contract.)

**HARDSHIP EXCEPTION TO \$50.00 MINIMUM RENTS.** A tenant under the Housing Choice Voucher program may be eligible to have their minimum rent reduced to "zero". The HA shall grant an exception to the minimum rent requirements if the tenant can demonstrate a hardship circumstance expected to be of a long-term basis (over ninety (90) days).

**HEAD OF HOUSEHOLD.** The head of household is the person who assumes legal and financial responsibility for the household and is listed on the application as head.

**HOUSING AGENCY.** A state, country, municipality or other governmental entity or public body authorized to administer the program. The term "HA" includes an Indian housing authority (IHA). ("PHA" and "HA" mean the same thing.)

**HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.** Act in which the U.S. Housing Act of 1937 (sometimes referred to as the Act) was re-codified, and which added the Section 8 Programs.

**HOUSING ASSISTANCE PAYMENT.** The monthly assistance payment by an HA. The total assistance payment consists of:

- (1) A payment to the owner for rent to owner under the family's lease.
- (2) An additional payment to the family if the total assistance payment exceeds the rent to owner. The additional payment is called a "utility reimbursement" payment.

**HOUSING ASSISTANCE PAYMENTS CONTRACT.** (HAP contract). A written contract between an HA and an owner in the form prescribed by HUD headquarters, in which the HA agrees to make housing assistance payments to the owner on behalf of an eligible family.

**HOUSING ASSISTANCE PLAN.** (1) A Housing Assistance Plan submitted by a local government participating in the Community Development Block Program as part of the block grant application, in accordance with the requirements of 570.303(c) submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD. (2) A Housing Assistance Plan meeting the requirements of 570.303(c) submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD.

**HOUSING CHOICE VOUCHER.** A document issued by the Authority to a family selected for admission to the Section 8 HCVP. The voucher describes the program and the procedures for PHA approval of the unit selected by the family.

**HOUSING CHOICE VOUCHER PROGRAM.** Rental voucher program.

**HOUSING QUALITY STANDARDS (HQS).** The HUD minimum quality standards for housing assisted under the tenant-based programs.

**HUD.** The Department of H&U or its division designee.

**HUD REQUIREMENTS.** HUD requirements for the Section 8 programs. HUD requirements are issued by HUD headquarters as regulations. Federal Register notices or other binding program directives.

**HURRA.** The Housing and Urban/Rural Recovery Act of 1983 legislation that resulted in most of the 1984 HUD Regulation changes to the definition of income, allowances, and rent calculations.

**IMPUTED ASSET.** Asset disposed of for less than Fair Market Value during two years preceding certification or recertification.

**IMPUTED INCOME.** HUD passbook rate x times the total cash value of assets. When assets exceed \$5,000.

**INCOME.** Income from all sources of each member of the household as determined in accordance with criteria established by HUD. Excludes financial assistance received for mandatory fees and charges (in addition to tuition).

**INCOME DISCREPANCY.** The difference between tenant income data maintained in HUD's tenant databases and Federal tax information.

**INCOME FOR ELIGIBILITY.** Annual Income.

**INCOME TARGETING.** At least 75% of new admissions during a PHA's fiscal year shall be targeted to extremely-low income families (families at or below 30% of the median income).

**INDIAN.** Any person recognized as an Indian or Alaska Native by an Indian Tribe, the federal government, or any State.

**INDIAN HOUSING AUTHORITY (IHA).** A housing agency established either:

- (1) By exercise of the power of self-government of an Indian Tribe, independent of State law, or
- (2) By operation of State law providing specifically for housing authorities for Indians.

**INTEREST REDUCTION SUBSIDIES.** The monthly payments or discounts made by HUD to reduce the debt service payments and, hence, rents required on Section 236 and 221 (d)(3) BMIR projects. Includes monthly interest reduction payments made to mortgagees of Section 236 projects and front-end loan discounts paid on BMIR projects.

**INVOLUNTARILY DISPLACED PERSON.** Involuntarily Displaced Applicants are applicants who meet the HUD definition for the federal preference.

**LANDLORD.** This term means either the owner of the property or his/her representative or the managing agent or his/her representative, as shall be designated by the owner.

**LEASE.** A written agreement between an owner and an eligible family for the leasing of a housing unit.

**LEASE ADDENDUM:** See Tenancy Addendum

The Section 8 Housing Choice Voucher program has an Addendum to Lease that has mandatory language which must be incorporated into any lease the HA and landlord/owner uses.

**LIVE-IN AIDE.** A person who resides with an elderly person or disabled person and who: 1. Is determined to be essential to the care and well-being of the person; 2. Is not obligated for the support of the person; and 3. Would not be living in the unit except to provide necessary supportive services. [24 CFR 5.403]

**LOCAL PREFERENCE.** A preference used by the HA to select among applicant families without regard to their federal preference status.

**LOW-INCOME FAMILY.** A family whose annual income does not exceed 80% percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families.

**MARKET RENT.** The rent HUD authorizes the owner of FHA insured/subsidized multi-family housing to collect from families ineligible for assistance.

**MAXIMUM INITIAL RENT BURDEN.** A family must not pay more than forty percent (40%) of adjusted income for rent when the family first receives Section 8 tenant based assistance for occupancy of a particular unit. This requirement only applies for a family that initially receives tenant-based assistance for occupancy of a unit after the merger date of October 1, 1999.

**MEDICAL EXPENSES.** Those total medical expenses, including medical insurance premiums that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance. A deduction for Elderly families or disabled families qualify. These allowances are given when calculating adjusted income for medical expenses in excess of 3% of Annual Income.

**MINIMUM RENT.** Minimum rent includes the combined (TTP) a family pays towards rent and/or utilities. Minimum family contribution in the Housing Choice Voucher program is \$50.00.

**MINOR.** A member of the family household (excluding foster children) other than the family head or spouse who is under 18 years of age.

**MONTHLY ADJUSTED INCOME.** 1/12 of the Annual Income after Allowances or Adjusted Income.

**MONTHLY INCOME.** 1/12 of the Annual Income.

**NEGATIVE RENT.** Now called Utility Reimbursement. A negative Tenant Rent results in a Utility Reimbursement Payment (URP).

**NET FAMILY ASSETS.** Value of equity in savings, checking, IRA and Keogh accounts, real property, stocks, bonds, and other forms of capital investment. The value of necessary items of personal property such as furniture and automobiles is excluded from the definition.

**NET FAMILY CONTRIBUTION.** Former name for Tenant Rent.

**NONCITIZEN.** A person who is neither a citizen nor a nation of the United States. [24 CFR 5.504]

**OCCUPANCY STANDARDS. [Now referred to as Subsidy Standards]** Standards established by an HA to determine the appropriate number of bedrooms for families of different sizes and compositions.

**OWNER.** Any persons or entity having the legal right to lease or sublease housing.

**PARTICIPANT.** A family that has been admitted to the HA's certificate program or voucher program. The family becomes a participant on the effective date of the first HAP contract executed by the HA for the family (First day of initial lease term).

**PAYMENT STANDARD.** The maximum subsidy payment for a family under the Housing Choice Voucher Program. The PHA sets a payment standard between 90% & 110% of the current HUD published FMR.

**PORTABILITY.** The ability of a family to move with its section 8 Tenant-based Assistance from the jurisdiction of one Housing Authority to that of another.

**PREMISES.** The building or complex in which a dwelling unit is located, including common areas and grounds.

**PUBLIC AND INDIAN HOUSING (PIH).** Office in HUD responsible for processing resident vouchers as part of the opt-out and termination process. PIH also oversees the FMC.



**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 AUTHORITY (PHA).** A state, county, municipality, or other government entity or public body (or agency or instrumentality thereof) authorized to engage in the development or operation of low-income housing.

**QUALITY HOUSING AND WORK RESPONSIBILITY ACT OF 1998.** The Act is an amendment to the U.S. Housing Act of 1937.

**RANKING PREFERENCE.** A preference used by the Authority to select among applicant families that qualify for federal preference.

**REAL ESTATE ASSESSMENT CENTER (REAC).** HUD center that conducts physical inspection of HUD properties and that notifies the BHA of any exigent health and safety conditions. REAC also reviews audited annual financial statements and the BHA's audit, and conducts resident surveys and tenant income verification.

**RECERTIFICATION.** Sometimes called re-examination. 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. There are annual and interim recertifications.

**RECIPIENT (SECTION 504).** Any state or its political subdivision any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. An entity or person receiving housing assistance payments from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or subrecipient merely by virtue of receipt of such payments. [24 CFR 8.3]

**REMAINING MEMBER OF TENANT FAMILY.** Person left in assisted housing after other family members have left and become unassisted.

**RENT TO OWNER.** This is called Contract Rent in the Certificate Program and Rent to Owner in the Voucher Program. It is the total amount of rent payable to the owner by the family and the HA per month for an assisted unit.

**RESIDENT ASSISTANT.** A person who lives in an Independent Group Residence and provides on a daily basis some or all of the necessary services to elderly, handicapped, and disabled individuals receiving Section 8 housing assistance and who is essential to these individuals' care or wellbeing. A Resident Assistant shall not be related by blood, marriage or operation of law to individuals receiving Section 8 assistance nor contribute to a portion of his/her income or resources towards the expenses of these individuals. (See Sections 882.109(n), 882.106(c) and 882.102 definitions in Appendix 1 of 7420.7.)

**SCREENING.** A review of an applicant's history to identify patterns of behavior that, if exhibited at the assisted housing development, would make the applicant an unsuitable tenant. Screening criteria may include consideration of drug-related or criminal activity, tenancy, credit and rent payment history, or other behaviors that may affect the rights of other residents and management.

**SECRETARY.** The Secretary of Housing and Urban Development.

**SECTION 504.** Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance [24 CFR 8.3]

**SECTION 8.** The housing assistance payments program that implements Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note). [24 CFR 891.505]

**SECURITY DEPOSIT.** A payment required by an owner to be held during the term of the lease (or the time period the tenant occupies the unit) to offset damages incurred due to the actions of the tenant. Such damages may include physical damage to the property, theft of property, and failure to pay back rent. Forfeiture of the deposit does not absolve the tenant of further financial liability.

**SERVICE PERSON.** A person in the active military or naval service (including the active reserve) of the United States.

**SINGLE PERSON.** A person living alone or intending to live alone.

**SPOUSE.** The husband or wife of the head of the household.

**SUBSIDIZED PROJECT.** A multi-family housing project (with the exception of a project owned by a cooperative housing mortgage corporation or association) which receives the benefit of subsidy in the form of:

- (1) Below-market interest rates pursuant to Section 221(d)(3) and (5) or interest reduction payments pursuant to Section 236 of the National Housing Act; or
- (2) Rent supplement payments under Section 101 of the Housing and Urban Development Act of 1965; or
- (3) Direct loans pursuant to Section 202 of the Housing Act of 1959; or
- (4) Payments under the Section 23 Housing Assistance Payments Program pursuant to Section 23 of the United States Housing Act of 1937 prior to amendment by the Housing and Community Development Act of 1974;
- (5) Payments under the Section 8 Housing Assistance Payments Program pursuant to Section 8 of the United States Housing Act after amendment by the Housing and Community Development Act unless the project is owned by a Public Housing Agency;
- (6) A Public Housing Project.

**SUBSTANDARD UNIT.** Substandard housing is defined by HUD for use as a federal preference.

**TENANCY ADDENDUM:** A HUD designee addition to a landlord's lease that includes, word for word, all HUD required languages.

**TENANT RENT.** (Formerly called Net Family contribution.) The amount payable monthly by the family as rent to the owner (including a PHA in other programs). Where all utilities (except telephone) and other essential housing services are supplied by the owner, Tenant Rent equals Total Tenant Payment. Where some of all utilities (except telephone) and other essential housing services are not supplied by the owner and the cost thereof is not included in the amount paid as rent to the owner, in the Voucher Program, Tenant Rent is Rent to Owner less HAP.

**TENANT REPAYMENT AGREEMENT.** The agreement signed between the BHA and a tenant in which the tenant agrees to repay excess rental assistance based on the terms specified in the agreement.

**TERMINATION.** The non-renewal or cancellation of a Section 8 contract. Terminations are usually the result of owner noncompliance with regulations and requirements.

**TERMINATION OF ASSISTANCE.** When a tenant fails to comply with certain HUD program requirements, the owner, under agreements with HUD, is obligated to terminate the assistance provided by HUD on behalf of that tenant.

**TERMINATION OF TENANCY.** Termination of tenancy occurs when a tenant violates specific provisions of the lease agreement, and the owner notifies the tenant that he/she no longer has the right to occupy the unit as a result of lease violations. The HUD model leases have very specific conditions under which tenancy may be terminated and procedures that must be followed during the termination process. (See model leases in Appendix 4 and guidance in Chapter 8, Termination.)

**TOTAL TENANT PAYMENT (TTP).** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

**UNIT.** Residential space for the private use of a family.

**UNUSUAL EXPENSES.** Prior to the change in the 1982 regulations, this was the term applied to the amounts paid by the family for the care of minors under 13 years of age or for the care of disabled or handicapped family household members, but only where such care was necessary to enable a family member to be gainfully employed.

**UTILITIES.** Utilities mean water, electricity, gas, other heating, refrigeration, cooking fuels, trash collection and sewage services. Telephone service is not included as a utility.

**UTILITY ALLOWANCE.** If the cost of utilities (except telephone) including range and refrigerator, and other housing services for an assisted unit is not included in the Contract Rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of a reasonable consumption of such utilities and other services for the unit by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthy living environment.

**UTILITY REIMBURSEMENT PAYMENT.** The amount, if any, by which the Utility Allowance for the unit, if applicable, exceeds the Total Tenant Payment for the family occupying the unit.

**VERY LARGE LOWER-INCOME FAMILY.** Prior to the change in the 1982 regulations this was described as a lower-income family which included eight or more minors. This term is no longer used.

**VERY LOW INCOME FAMILY.** A Lower-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 Certificate and Voucher Programs.

**VETERAN.** A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released therefrom under conditions other than dishonorable.

**VIOLENT CRIMINAL ACTIVITY.** Any illegal criminal activity that has as one of its elements the use attempted use, or threatened use of physical force against the person or property of another.

**WAITING LIST.** A list of families organized according to HUD regulations and HA policy who are waiting for subsidy to become available.

**WELFARE ASSISTANCE.** Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, state, or local governments.

### **C. GLOSSARY OF TERMS USED IN THE NONCITIZENS RULE**

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

**CITIZEN.** A citizen or national of the United States.

**EVIDENCE.** Evidence of citizenship or eligible immigration status means the documents which must be submitted to evidence citizenship or eligible immigration status.

**HA.** A housing authority- either a public housing agency or an Indian housing authority or both.

**HEAD OF HOUSEHOLD.** The adult member of the family who is the head of the household for purpose of determining income eligibility and rent.

**HUD.** Department of Housing and Urban Development.

**INS.** The U.S. Immigration and Naturalization Service.

**MIXED FAMILY.** A family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status.

**NATIONAL.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**NONCITIZEN.** A person who is neither a citizen nor national of the United States.

**RESPONSIBLE ENTITY.** The person or entity responsible for administering the restrictions on providing assistance to non-citizens with ineligible immigration status (the HA).

**SECTION 214.** Section 214 restricts HUD from making financial assistance available for non-citizens unless they meet one of the categories of eligible immigration status specified in Section 214.

**SPOUSE.** Spouse refers to the marriage partner, either a husband or wife, who is someone you need to divorce in order to dissolve the relationship. It includes the partner in a common-law marriage. It does not cover boyfriends, girlfriends, significant others, or "co-heads." "Co-head" is a term recognized by some HUD programs, but not by public and Indian housing programs.

## EXHIBIT 7-1: ANNUAL INCOME FULL DEFINITION

### 24 CFR 5.609

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

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

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

*(b) Annual income does not include the following:*

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

(2) The following types of trust distributions:

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

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

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

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

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

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

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

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

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

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

(9)

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

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

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

- 1) The Federal government;
- (2) A State, Tribe, or local government;
- (3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);
- (4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- (5) An institution of higher education.

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

- (1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;
- (2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section); (
- 3) Gifts, including gifts from family or friends; or

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

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

- (1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;
- (2) Expressly to assist a student with the costs of higher education; or
- (3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

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

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

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

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

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

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

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

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

(12)

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

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

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

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

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

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

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



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

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

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

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

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

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

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

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

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

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

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

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

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

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

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

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

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

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such

accounts shall be income at the time they are received by the family.

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

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

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

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

## EXHIBIT 7-2: 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 7-3: 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's determination of a specified welfare benefits reduction.