

CHAPTER 3

ELIGIBILITY

INTRODUCTION

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

To be eligible for the public housing program:

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

This chapter contains three parts:

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

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

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

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

PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

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

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.105(a)(2), 24 CFR 5.403 and Notice PIH 2014-20]

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

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

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

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

1. A single person who may be elderly; disabled, near elderly, or any other single person
2. A group of persons residing together that includes but is not limited to:
3. 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),
4. An elderly family,
5. A near-elderly family,
6. A disabled family,
7. A displaced family, or
8. The remaining member of a tenant family

Gender Identity means actual or perceived gender characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

OHA Policy

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

Household

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

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

Family Break-up

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

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

OHA Policy

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

If a family breaks up into two otherwise eligible families while living in public housing only one of the new families will retain occupancy of the unit.

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

In the absence of a judicial decision or an agreement among the original family members, OHA will determine which family retains their placement on the site-based waiting list(s) or will continue in occupancy, taking into consideration, the following factors:

- (1) The interest of any minor children, including custody arrangements;
- (2) The interest of any ill, elderly, or disabled family members;
- (3) The interest of any family member who is a victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave a public housing unit as a result of such actual or threatened abuse, and provides documentation in accordance with section 16-VII.D of this ACOP;
- (4) Any possible risks to family members as a result of criminal activity; and
- (5) The recommendations of social service professionals.

Remaining Member of a Tenant Family [24 CFR 5.403]

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

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

OHA Policy

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

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

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

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

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

3-I.E. SPOUSE, CO-HEAD, AND OTHER ADULT

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

Spouse means the marriage partner of the head of household.

OHA Policy

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

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

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

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

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

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

Joint Custody of Dependents

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

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

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

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

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

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

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

Elderly Persons

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

Near-Elderly Persons

A *near-elderly person* is a person who is at least 50 years of age but below the age of 62 [24 CFR 945.105].

Elderly Family

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

3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403]

Persons with Disabilities

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

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

Disabled Family

A *disabled family* is one in which the head, spouse, or co-head is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides. (24 CFR Sec. 5.403)

Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

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

3-I.J. GUESTS [24 CFR 5.100]

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

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

OHA Policy

A resident family must notify OHA when overnight guests will be staying in the unit for more than 3 days. A guest can remain in the unit no longer than 14 consecutive days or a total of 45 cumulative calendar days during any 12-month period.

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

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, who are not included as family members because they live outside of the public housing unit more than 50 percent of the time, are not subject to the time limitations of guests as described above.

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

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

3-I.K. FOSTER CHILDREN AND FOSTER ADULTS

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

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

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

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

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

3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

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

Absent Students

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

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

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

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

Absences Due to Military Duty

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

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

Absent Head, Spouse, or Co-head

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

Individuals Confined for Medical Reasons

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

If there is a question about the status of a family member, OHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent up to 180 days. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

Return of Permanently Absent Family Members

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

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

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

3-I.M. LIVE-IN AIDE

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

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

OHA Policy

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

A live-in aide should:

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

If a family member requested to become a live-in aide and OHA has approved the request, the member loses their right to become a future household member, such determination is non-revocable. A relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

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

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

A live-in aide would use the assisted unit as their primary residence, that is, one aide for around the clock care. Occasional, intermittent, multiple or rotating care-givers typically do not reside in the unit and would not qualify as live-in aides; therefore, an additional bedroom will not be approved for a live-in aide under these circumstances. [[Notice PIH-2009-22]

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

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

The person has a history of drug-related criminal activity or violent criminal activity; or
The person currently owes rent or other amounts to OHA or to another OHA in connection with Section 8 or public housing assistance under the 1937 Act.

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

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

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

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

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

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

Extremely low-income family. A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

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

Using Income Limits for Eligibility [24 CFR 960.201]

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

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

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

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

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

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

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

OHA Policy

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

3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E]

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

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

Declaration [24 CFR 5.508]

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

U.S. Citizens and Nationals

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

Eligible Non-citizens

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

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

Ineligible Non-citizens

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

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

Mixed Families

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

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

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

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

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

Grievance procedures are contained in Chapter 14.

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

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

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

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

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

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2012-10 as amended by MTW]

All family members must provide documentation of a valid Social Security Number (SSN). Assistance cannot be provided to a family until all SSN documentation requirements are met. A detailed discussion of acceptable documentation is provided in Chapter 7.

If a new member is over the age of 18, that person must provide SSN documentation as a part of the eligibility determination and prior to being added to the lease.

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

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

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

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

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

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

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

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

OHA Policy (~~pending HUD approval~~)

OHA may require each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign the HUD approved OHA Authorization Release Form/Privacy Act Notice form in lieu of the form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance

PART III: DENIAL OF ADMISSION

3-III.A. OVERVIEW

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

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

This part covers the following topics:

1. Required denial of admission
2. Other permitted reasons for denial of admission
3. Screening
4. Criteria for deciding to deny admission
5. Prohibition against denial of admission to victims of domestic violence, dating violence, sexual assault, or stalking
6. Notice of eligibility or denial

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

OHA is required to establish standards that prohibit admission of an applicant to the public housing program if they have engaged in certain criminal activity or if OHA has reasonable cause to believe that a household member's current use or pattern of use of illegal drugs, and/or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or neighbors.

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

OHA Policy

OHA will deny admission in the following cases:

- If any member of the household or any otherwise eligible family who has been evicted from federally-assisted housing in the last 5 years for drug-related criminal activity unless OHA determines:
 - ☉ The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by OHA, or
 - ☉ The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).
- OHA determines that any household member is currently engaged in the illegal use of drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recent enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)]. OHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

In determining reasonable cause, OHA will consider all credible evidence, including but not limited to, conduct underlying an arrest, any record of convictions, or evictions of household members related to the use, sales, possession or abuse of illegal drugs or the abuse of alcohol. While OHA not base a determination that an applicant or household engaged in criminal activity warranting denial, termination, or eviction on an arrest record, it may use an arrest to trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity.

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

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

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

Criminal Activity [24 CFR 960.203 (b) and (c), ~~Notice PHH 2015-19~~]

OHA is responsible for screening family behavior and suitability for tenancy. In doing so, OHA may consider an applicant's history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants. OHA's adverse housing decisions based upon criminal activity must be supported by sufficient evidence that the individual engaged in such activity.

OHA Policy

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

1. Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].
2. Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].
3. Criminal activity that may threaten the health, safety, or peaceful enjoyment of the premises by other residents. [24 CFR 960.203(c)(3)].
4. Criminal activity that may threaten the health or safety of OHA staff, contractors, subcontractors, or agents.
5. Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

Evidence of such criminal activity includes, but is not limited to any record of convictions, release from custody, or evictions for suspected drug-related or violent criminal activity of household members within the past 5 years. An arrest record also can trigger an inquiry into whether there is sufficient evidence for OHA to determine that a person engaged in disqualifying criminal activity, but is not itself evidence on which to base a determination.

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

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

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

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

OHA Policy

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

1. Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past five years
2. Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past five years which may adversely affect the health, safety, or welfare of other tenants
3. Has a pattern of eviction from housing or termination from residential programs within the past five years (considering relevant circumstances)
4. Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent
5. Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program
6. Has engaged in or threatened violent or abusive behavior toward OHA personnel

Abusive or violent behavior towards OHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

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

1. Owes rent or other amounts to this or any other OHA or owner in connection with any assisted housing program

OHA Policy

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

fails to repay the debt in full before the 30-day period expires (or an extended period up to 90 days authorized by the debt owed OHA and OHA),

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

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

3-III.D. SCREENING

Screening for Eligibility

OHA is authorized to obtain criminal conviction records from law enforcement agencies, FBI channelers, and certified criminal search vendors to screen applicants for admission to the public housing program. This authority assists OHA in complying with HUD requirements and OHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records OHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

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

OHA Policy

OHA will perform criminal background checks for all adult household members. Information may be obtained from any combination of qualified sources or their successors in interest including, but not limited to the California Law Enforcement Telecommunications System (CLETS) or the National Crime Information Center (NCIC).

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

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

If OHA proposes to deny admission based on a criminal record or on lifetime sex offender registration information, OHA must notify the household of the proposed action and must provide the subject of the record a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission

[24 CFR 5.903(f) and 5.905(d)].

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

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

OHA Policy

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

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

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

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

OHA Policy

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

Past Performance in Meeting Financial Obligations, Especially Rent

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

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

If an applicant has no rental payment history, OHA will check court records of eviction actions and other financial judgments, and credit reports. A lack of credit history will not disqualify someone from becoming a public housing resident, but a poor credit rating may.

Applicants with no rental payment history will also be asked to provide OHA with personal references. The references will be requested to complete a verification of the applicant's ability to pay rent if no other documentation of ability to meet financial obligations is available.

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

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

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

Police and court records within the past five years will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest or conviction. While OHA not base a determination that an applicant or household engaged in criminal activity warranting denial, termination, or eviction on an arrest record, it may use an arrest to trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity.

A personal reference will be requested to complete a verification of the applicant's ability to care for the unit and avoid disturbing neighbors if no other documentation is available. In these cases, the applicant will also be required to complete a checklist documenting their ability to care for the unit and to avoid disturbing neighbors.

Home visits may be used to determine the applicant's ability to care for the unit.

Screening Employee Applicants/Clients

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

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

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

It shall be the responsibility of the Deputy Executive Director or their designee to ensure that any actions or decisions taken within the his department affecting any employee's participant status or the participant status of an employee's relative are in accordance with all applicable policies and procedures. OHA shall ensure that the employee or employee's relative shall neither suffer

any loss of benefits nor receive any gain of benefits as a result, direct or indirect, of their employment at OHA or their relationship to an OHA employee. As such:

- | ☹️ Each initial determination of eligibility and each selection to a program of an OHA employee or a relative of an OHA employee shall be forwarded to the Deputy Executive Director or his designee for review and final approval. A certification stating that all determinations and actions taken have been reviewed pursuant to applicable policies and procedures.

- | ☹️ Any time action is taken or a decision is made which affects the applicant or participant status of an OHA employee or a relative of an OHA employee in any way, all OHA paperwork must be received and signed by the appropriate director before the action or decision becomes effective.

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

Evidence

OHA will use the concept of the preponderance of the evidence as the standard for making all admission decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Consideration of Circumstances [24 CFR 960.203(c)(3) and (d) ~~and Notice PIH 2015-19~~]

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

In the event OHA receives unfavorable information with respect to an applicant, consideration must be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). In a manner consistent with its policies, OHA may consider factors, which might indicate a reasonable probability of favorable future conduct.

OHA Policy

OHA may consider the following circumstances when making its decision:

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

with the arrest and consider the reported circumstances of the arrest.

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

8. Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property

9. Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs; and

10. In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully.

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

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

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

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

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

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

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

If the applicant family indicates that the behavior of a family member with a disability is the reason for the proposed denial of admission, OHA will determine whether the behavior is related to the disability. If so, upon the family's request, OHA will determine whether alternative measures are appropriate as a reasonable accommodation. OHA will only consider

accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of admission. See Chapter 2 for a discussion of reasonable accommodation.

3-III.F. NOTICE OF ELIGIBILITY OR DENIAL

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

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

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

OHA Policy

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

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

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

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

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

The Violence Against Women Act of 2005 and 2013 (VAWA) and the HUD regulations at 24 CFR 5.2005(b) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking. [24 CFR 5.2005].

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

Notification and Victim Documentation

VAWA 2013 expanded notification requirements to include the obligation for OHA to provide applicants who are denied assistance with a notice of VAWA rights and the form HUD-~~50066~~ 5382 at the time the applicant is denied.

OHA Policy

OHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history that would warrant denial under OHA's policies. Therefore, if OHA makes a determination to deny admission to an applicant family, OHA will include in its notice of denial a statement of the protection against denial provided by VAWA, a notice of VAWA rights and a copy of the form HUD-~~50066~~5382. OHA will offer the applicant the opportunity to provide a statement or documentation affirming that domestic violence, dating violence, sexual assault, or stalking played a role in causing the basis for ineligibility. In accordance with OHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

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

1. Completing a HUD-approved certification form (such as Form HUD-~~50066~~ 5382 ~~or HUD-91066~~) or signed statement verifying that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking, and that the incident or incidents in question are bona fide incidents of actual or threatened abuse. OHA will work with the victim to ensure that delivery of the certification form does not endanger the victim's safety. OR
2. Providing the requesting owner, manager, or OHA with documentation signed by any of the following third parties: (a) an employee, agent, or volunteer of a victim service provider; (b) an attorney; (c) a medical professional; or (d) other knowledgeable professional. The person signing the documentation must have assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of the abuse. The person signing the documentation must attest under penalty of perjury to his or her belief that the incident or incidents in question are bona fide incidents of abuse. The victim of domestic violence, dating violence,

sexual assault, or stalking must also sign the documentation. or

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

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

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

Perpetrator Removal or Documentation of Rehabilitation

OHA Policy

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

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

OHA Confidentiality Requirements

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

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

is otherwise required by applicable law. If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, OHA will inform the victim before disclosure occurs so that safety risks can be identified. If disclosure of the information would place the victim's safety at risk, OHA will work with the victim to determine whether there are alternatives to disclosure.

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

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

- 1. Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:
Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or

In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C.6001(8)], which defines developmental disability in functional terms as follows:

1.(A) In General

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

- 1.- attributable to a mental or physical impairment or combination of mental and physical impairments
- 2.- Is manifested before the person attains age twenty-two
- 3.- Is likely to continue indefinitely
- 4.- Results in substantial functional limitations in three or more of the following areas of major life activity: (1) self-care; (2) receptive and responsive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency
- 5.- Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

6.(B) Infants and Young Children

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

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

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

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

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

Individual with Handicaps [24 CFR 8.3]

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

~~1.~~(1) Physical or mental impairment includes:

~~1.~~(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine

~~2.~~(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.~~(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.~~(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.~~(4) Is regarded as having an impairment means:

~~1.~~(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

~~2.~~(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

~~3.~~(c) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment

CHAPTER 6: INCOME AND RENT DETERMINATIONS

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

INTRODUCTION

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

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

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

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

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

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

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

5.609 Annual income.

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

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

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

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

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

OHA Policy

~~**Under MTW Authority, OHA may implement reasonable family payment policy including total tenant payment, minimum rent, utility reimbursements and tenant rent, including but not limited to establishing definitions of income and adjusted income, or earned income disallowance. The Authority may adopt and implement term limits for its public housing assistance. Such policies will include provisions for addressing hardship cases. This authorization waives certain provisions of Section 3(a)(2), 3(a)(3)(A) and Section 6(l) of the 1937 Act and 24 C.F.R. 5.603, 5.611, 5.628, 5.630, 5.632, 5.634 and 960.255 and 966 Subpart A as necessary to implement the Agency's Annual MTW Plan.**~~

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

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6-I.B. HOUSEHOLD COMPOSITION AND INCOME

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

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

Temporarily Absent Family Members

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

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

Absent Students

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

Absences Due to Placement in Foster Care

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

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

Absent Head or Co-head

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

Absences Due to Military Duty

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

Family Members Permanently Confined for Medical Reasons

A former family member confined to a nursing home or hospital on a permanent basis is not considered a family member and the income of that person is not counted

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

Joint Custody of Children

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

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

Caretakers for a Child

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

Caretaker will not apply for eligibility

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

Caretaker to apply for eligibility while living in unit

- If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as an authorized visitor for 90 days; and will be required to sign the *Use of Space License Agreement*.
- During the initial 30-day period, the caretaker must pass OHA criminal activity and suitability screening and the caretaker must initiate formal custody or legal guardianship with a responsible agency and provide documentation to OHA. If after 90 days has lapsed and the caretaker has not initiated the process to obtain formal custody or legal guardianship, OHA will proceed with action to recover the unit.
- If formal custody or legal guardianship is awarded to a caretaker, the caretaker will be required to sign the lease as head of household (subject to the caretaker meeting all OHA eligibility admissions criteria for Public Housing Program participation.)
- Only a head of household will be added to the household subsidy size cannot be increased. If the new HOH has additional family members, the mixed family proration will be used to calculate the subsidy. The new members are considered ineligible based on the Caretaker for a Child Rule Only.
- The head of household will no longer qualify for program participation if the minor is no longer a member of the household.
- During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.
- OHA may extend the caretaker's status as an eligible visitor up to 180 days..
- Caretakers will be required to sign a document acknowledging that the caretaker is not a

party to the lease nor entitled to OHA assistance. The caretaker is only approved to live in the unit while serving as the caretaker for the participant minor children. The caretaker will be required to comply with all house rules.

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

6-I.C. ANNUAL INCOME

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

Basis of Annual Income Projection

OHA will use current or historical circumstances to determine income for the coming 12-month period. HUD authorizes OHA to use other than current circumstances to anticipate income when:

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

OHA Policy

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

Known Changes in Income

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

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases, OHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if OHA's policy on reexaminations does not require interim reexaminations for other types of changes.

Using Up-Front Income Verification (“UIV”) to Calculate Income

OHA is required to use HUD’s Enterprise Income Verification (EIV) system in its entirety to verify tenant employment and income information during mandatory reexaminations of family composition and income, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance [24 CFR 5.233(a)(2)].

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

OHA Policy

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

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

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

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

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

- OHA will request written third-party verification from the discrepant income source in accordance with 24 CFR 5.236(b)(3)(i).
- When OHA cannot readily anticipate income (e.g., in cases of seasonal employment, unstable working hours, or suspected fraud), OHA will review historical income data for patterns of employment, paid benefits, and receipt of other income.
- OHA will analyze all UIV, third-party, and family-provided data and attempt to resolve the income discrepancy.
- OHA will use the most current verified income data and, if appropriate, historical income data to calculate anticipated annual income.

6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

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

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

OHA Policy

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

Some Types of Military Pay

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

Types of Earned Income Not Counted in Annual Income

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

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

OHA Policy

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

Children's Earnings [24 CFR 5.609(c)(1)]

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

Certain Earned Income of Full-Time Students

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, or co-head) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must

be considered “full-time” by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

Income of a Live-in Aide

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

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

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

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

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

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

State and Local Employment Training Program

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

OHA Policy

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

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

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

End of participation in a training program must be reported in accordance with OHA's interim reporting requirements (see chapter on reexaminations).

HUD-Funded Training Programs

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

OHA Policy

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

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

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

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

The earned income disallowance (“EID”) encourages people to enter the work force by not including the full value of increases in earned income for a period of time. Effective April 7, 2016, the EID benefit guidelines were changed from a 24-month benefit which could spread across 48 months to accounts for intermittent job losses, to a straight 24-month period of benefits with a clear start date and end date, irrespective of whether a family maintains continual employment during the 24-month period. Eligibility criteria and limitations on the disallowance are summarized below.

OHA Policy

Resident families that were receiving EID benefits prior to the April 7, 2016 rule changes, will continue to receive benefits according to the regulations in effect at the time EID benefits began until the benefit period expires for these families.

Eligibility

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

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

OHA Policy [MTW]

Households participating in the MTW Rent Reform Pilot are not eligible for EID.

Calculation of the Disallowance

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

While qualification for the disallowance is the same for all families, calculation of the disallowance will differ depending on when the family member qualified for the EID. Residents qualifying prior to May 9, 2016 will have the disallowance calculated under the "Original Calculation Method" described below, which requires a maximum lifetime disallowance period of up to 48 consecutive months. Residents qualifying on or after May 9, 2016 will be subject to the "Revised Calculation Method," which shortens the lifetime disallowance period to 24 consecutive months. Under both the original and new methods, the EID eligibility criteria, the benefit amount, the single lifetime eligibility requirement and the ability of the applicable family member to stop and restart employment during the eligibility period are the same.

Original Calculation Method

Initial 12-Month Exclusion

The initial 12-month exclusion period begins on the date a member of the qualified family is first employed or the family first experiences an increase in annual income attributable to employment. During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings over the baseline is excluded. The 12 months are consecutive, irrespective of whether a family maintains continual employment.

OHA Policy

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

Second 12-Month Exclusion and OHAe-In

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

Lifetime Limitation

The EID has a two year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 consecutive months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

OHA Policy

During the 24-month eligibility period, OHA will conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below baseline income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

Revised Calculation Method

Initial 12-Month Exclusion

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

OHA Policy

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

Second 12-Month Exclusion

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

OHA Policy

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

Lifetime Limitation

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24-month period, an individual remains eligible for EID even if they receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance.

Individual Savings Accounts [24 CFR 960.255(d)]

OHA Policy

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

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

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

Business Expenses

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

OHA Policy

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

Business Expansion

HUD regulations do not permit OHA to deduct from gross income expenses for business expansion.

OHA Policy

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

Capital Indebtedness

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

OHA Policy

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

Negative Business Income

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

Withdrawal of Cash or Assets from a Business

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

OHA Policy

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

Co-owned Businesses

OHA Policy

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

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

Overview

There is no asset limitation for participation in the public housing program. However, HUD requires that OHA include in annual income the “interest, dividends, and other net income of any kind from real or personal property” [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, OHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and OHA policies related to each type of asset.

Optional policies for family self-certification of assets are found in Chapter 7

General Policies

Income from Assets

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

- (3) OHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, OHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

OHA Policy

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

Valuing Assets

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

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

OHA Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28 and PH Occ GB, p. 121].

Lump-Sum Receipts

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

Imputing Income from Assets [24 CFR 5.609(b)(3), Notice PIH 2012-29]

When the family has net family assets in excess of \$50,000, OHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by an average passbook savings rate as determined by OHA. OHA will establish a passbook rate within 0.75 percent of the Savings National Rate at www.fdic.gov/regulations/resources/rates/ and review it annually on July 1 of each year.

Determining Actual Anticipated Income from Assets

It may or may not be necessary for OHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

Withdrawal of Cash or Liquidation of Investments

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

Jointly-Owned Assets

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes “amounts derived (during the 12-month period) from assets to which any member of the family has access.”

OHA Policy

If an asset is owned by more than one person and any family member has unrestricted access to the asset, OHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, OHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, OHA will prorate the asset evenly among all owners. This will be established in our procedures.

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

HUD regulations require OHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

Minimum Threshold

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

OHA Policy

OHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$50,000.

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertifications, the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in non-revocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

Separation or Divorce

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

OHA Policy

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

Foreclosure or Bankruptcy

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

Family Declaration

OHA Policy

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

Types of Assets

Checking and Savings Accounts

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero.

OHA Policy

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

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

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

Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

OHA Policy

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

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

Equity in Real Property or Other Capital Investments

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25 and PH, p. 121].

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

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

A family may have real property as an asset in two ways:

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

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

OHA Policy

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

Trusts

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

Revocable Trusts

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

Non-revocable Trusts

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

Retirement Accounts

Company Retirement/Pension Accounts

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, OHA must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

IRA, Keogh, and Similar Retirement Savings Accounts

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

Personal Property

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

OHA Policy

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

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

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

OHA Policy

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

Life Insurance

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

6-I.H. PERIODIC PAYMENTS

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

Periodic Payments Included in Annual Income

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

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

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income. Additionally, any deferred disability benefits that are received in a lump sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [24 CFR 5.609(c)(14)].

OHA Policy

When a delayed-start payment is received and reported during the period in which OHA is processing an annual reexamination, OHA will adjust the tenant rent retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with OHA.

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

Treatment of Overpayment Deductions from Social Security Benefits

OHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, OHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

Periodic Payments Excluded from Annual Income

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

OHA Policy

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

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)].
Note: EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.H.) [24 CFR 5.609(c)(14)].

Lump-sums or prospective monthly amounts received as deferred disability benefits from the

- Department of Veterans Affairs (VA) [24 CFR 5.609(c)(14)].

6-I.I. PAYMENTS IN LIEU OF EARNINGS

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

6-I.J. WELFARE ASSISTANCE

Overview

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

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

OHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below.

Covered Families

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

Imputed Income

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, OHA must include in annual income “imputed” welfare income. OHA must request that the welfare agency inform OHA when the benefits of a public housing resident are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

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

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

Offsets

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

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

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

Alimony and Child Support

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

OHA Policy

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

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

Regular Contributions or Gifts

OHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a tenant family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

OHA Policy

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by OHA. For contributions that may vary from month to month (e.g., utility payments), OHA will include an average amount based upon past records.

6-I.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

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

1. Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
2. Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
3. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
4. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
5. Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
6. Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
7. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
8. Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:
 - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
 - (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
 - (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
 - (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
 - (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
 - (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931).)
 - (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
 - (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual

Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)

- (i) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (j) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (k) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (l) 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)
- (m) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (n) 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)
- (o) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (p) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805)
- (q) 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)
- (r) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
- (s) Kinship Payments - Kinship payments are foster care subsidies for children living with a related legal guardian. Previously, Public Housing Agencies (OHA) included California's Kinship Guardian Assistant Payments (Kin-GAP) as income when determining annual household income. Congress and housing advocates sought our interpretation of the income criteria in order to remove a disincentive towards family unification and to treat Kin-GAP the same as foster care payments. (PIH 2008-40)
- (t) Deferred Department of Veteran Affairs (VA) disability benefits that are received in a lump sum or in prospective monthly amounts. [Section 2608 of Title VI of Division B of the Housing and Economic Recovery Act (HERA) July 30, 2008]

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Under MTW Authority, OHA may implement reasonable family payment policy including total tenant payment, minimum rent, utility reimbursements and tenant rent, including but not limited to establishing definitions of income and adjusted income, or earned income disallowance. The Authority may adopt and implement term limits for its public housing assistance. Such policies will include provisions for addressing hardship cases. *This authorization waives certain provisions of Section 3(a)(2), 3(a)(3)(A) and Section 6(l) of the 1937 Act and 24 C.F.R. 5.603, 5.611, 5.628, 5.630, 5.632, 5.634 and 960.255 and 966 Subpart A as necessary to implement the Agency's Annual MTW Plan.*

Overview

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

5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity (OHA) must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
 - (i) Unreimbursed medical expenses of any elderly family or disabled family;
 - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
- (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

OHA Policy

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

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7, Verifications.

Anticipating Expenses

OHA Policy

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

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

6-II.B. DEPENDENT DEDUCTION

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

6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

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

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

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

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

Definition of Medical Expenses

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

OHA Policy

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

Summary of Allowable Medical Expenses from IRS Publication 502

Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are necessary, legal, and non-cosmetic	Psychiatric treatment
Services of medical facilities	Ambulance services and some costs of transportation related to medical expenses
Hospitalization, long-term care, and in-home nursing services	The cost and care of necessary equipment related to a medical condition (e.g. eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if they are recommended by a doctor	Cost and continuing care of necessary service animals
Improvements to housing directly related to medical needs (e.g., ramps for a wheelchair, handrails)	Medical insurance premiums or the cost of a health maintenance organization (HMO)

Note: This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.

Families that Qualify for Both Medical and Disability Assistance Expenses

OHA Policy

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

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

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

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

Earned Income Limit on the Disability Assistance Expense Deduction

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

OHA Policy

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

When OHA determines that the disability assistance expenses enable more than one family member to work, the disability assistance expenses will be capped by the sum of the family members’ incomes [PH Occ GB, p. 124].

Eligible Disability Expenses

Examples of auxiliary apparatus are provided in the *PH Occupancy Guidebook* as follows: “Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals” [PH Occ GB, p. 124], but only if these items are directly related to permitting the disabled person or other family member to work [HCV GB, p. 5-30]. HUD advises OHA to further define and describe auxiliary apparatus [VG, p. 30].

Eligible Auxiliary Apparatus

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

Eligible Attendant Care

The family determines the type of attendant care that is appropriate for the person with disabilities.

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

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

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

Payments to Family Members

No disability expenses may be deducted for payments to a member of a tenant family [23 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the tenant family may be deducted if they are reimbursed by an outside source.

Necessary and Reasonable Expenses

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

OHA Policy

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

Families that Qualify for Both Medical and Disability Assistance Expenses

OHA Policy

This policy applies only to families in which the head, spouse, or co-head is 62 or older

or is a person with disabilities.

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

6-II.F. CHILD CARE EXPENSE DEDUCTION

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

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

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

OHA Policy

The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

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

Seeking Work

OHA Policy

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

Furthering Education

OHA Policy

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

Being Gainfully Employed

OHA Policy

If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

Earned Income Limit on Child Care Expense Deduction

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)]. The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

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

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

OHA Policy

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

Eligible Child Care Expenses

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

Allowable Child Care Activities

OHA Policy

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

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

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, OHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Necessary and Reasonable Costs

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

OHA Policy

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

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

6-II.G. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)]

OHA has opted not to use permissive deductions.

PART III: CALCULATING RENT

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

Under MTW Authority, OHA may implement reasonable family payment policy including total tenant payment, minimum rent, utility reimbursements and tenant rent, including but not limited to establishing definitions of income and adjusted income, or earned income disallowance. The Authority may adopt and implement term limits for its public housing assistance. Such policies will include provisions for addressing hardship cases. *This authorization waives certain provisions of Section 3(a)(2), 3(a)(3)(A) and Section 6(l) of the 1937 Act and 24 C.F.R. 5.603, 5.611, 5.628, 5.630, 5.632, 5.634 and 960.255 and 966 Subpart A as necessary to implement the Agency's Annual MTW Plan.*

TTP Formula [24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for a tenant family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- A minimum rent between \$0 and \$50 that is established by OHA

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

OHA Policy

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

Minimum Rent [24 CFR 5.630]

OHA Policy

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

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

OHA have been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory deductions. At the discretion of OHA, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

OHA's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to OHA's designed income-based rents in the same manner as they are applied to the regulatory income-based rents.

The choices are limited only by the requirement that the method used not produce a TTP or tenant rent greater than the TTP or tenant rent produced under the regulatory formula.

OHA Policy

OHA chooses not to adopt optional changes to income-based rents.

Ceiling Rents [24 CFR 960.253 (c)(2) and (d)]

Ceiling rents are used to cap income-based rents. They are part of the income-based formula. If the calculated TTP exceeds the ceiling rent for the unit, the ceiling rent is used to calculate tenant rent (ceiling rent/TTP minus utility allowance). Increases in income do not affect the family since the rent is capped. The use of ceiling rents fosters upward mobility and income mixing. Because of the mandatory use of flat rents, the primary function of ceiling rents now is to assist families who cannot switch back to flat rent between annual reexaminations and would otherwise be paying an income-based tenant rent that is higher than the flat rent.

Ceiling rents must be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities) [PH Occ GB, p. 135].

OHA Policy

OHA chooses not to use ceiling rents.

Utility Reimbursement [24 CFR 960.253(c)(3)] [MTW]

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

OHA Policy

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

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

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

Overview

If OHA establishes a minimum rent greater than zero, OHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

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

HUD-Defined Financial Hardship

Financial hardship includes the following situations:

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

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

- (2) The family would be evicted because it is unable to pay the minimum rent.

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

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.
- (4) A death has occurred in the family.

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

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

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

MTW Rent Reform Hardships

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

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

Implementation of Financial Hardship Exemption

Determination of Hardship

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

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

OHA Policy

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

OHA may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption.

When the minimum rent is suspended, the TTP reverts to the highest of the remaining components of the calculated TTP.

OHA Policy

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

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

No Financial Hardship

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

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

OHA Policy

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

Temporary Hardship

If OHA determines that a qualifying financial hardship is temporary, OHA must reinstate the minimum rent from the beginning of the first of the month following the date of the family's request for a hardship exemption.

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

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

OHA Policy

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

Long-Term Hardship

If OHA determines that the financial hardship is long-term, OHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

OHA Policy

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

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

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

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

Overview

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

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

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

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

Reasonable Accommodation [24 CFR 8]

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

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

Utility Allowance Revisions [24 CFR 965.507]

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

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

OHA Policy

Unless OHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first scheduled reexamination after the allowance is adopted, up to and including any utility allowance schedule developed under MTW authority.

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

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

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. OHA must prorate the assistance provided to a mixed family. OHA will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, OHA must:

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

OHA Policy

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

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

Flat Rents [24 CFR 960.253(b)]

The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient. There is no utility allowance or reimbursement with flat rents. When the family elects to pay the flat rent, the flat rent amount quoted to the family by OHA is the amount the family pays. Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

Policies related to the reexamination of families paying flat rent are contained in Chapter 9, and policies related to the establishment and review of flat rents are contained in Chapter 16.

Family Choice in Rents [24 CFR 960.253(a) and (e)]

OHA must offer families the choice between a flat rent and an income-based rent. The family may not be offered this choice more than once a year. OHA must document that flat rents were offered to families under the methods used to determine flat rents for OHA.

OHA Policy

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

OHA will require families to submit their choice of flat or income-based rent in writing and will maintain such requests in the tenant file as part of the admission or annual reexamination process.

OHA must provide sufficient information for families to make an informed choice. This information must include OHA's policy on switching from flat rent to income-based rent due to financial hardship and the dollar amount of the rent under each option. However, if the family chose the flat rent for the previous year, OHA is required to provide an income-based rent amount only in the year that a reexamination of income is conducted or if the family specifically requests it and submits updated income information.

Switching from Flat Rent to Income-Based Rent Due to Hardship [24 CFR 960.253(f)]

A family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If OHA determines that a financial hardship exists, OHA must immediately allow the family to switch from flat rent to the income-based rent.

OHA Policy

Upon determination by OHA that a financial hardship exists, OHA will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request.

Reasons for financial hardship include:

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items
- Such other situations determined by OHA to be appropriate

OHA Policy

OHA considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent [PH Occ GB, p. 137].

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

When new flat rents requirements were implemented in 2014, HUD limited the increase for existing residents paying flat rent at that time to no more than 35 percent of the current tenant rent per year. In some cases, this meant that some residents had or will have their flat rents phased-in at the time of their annual recertification. To do this, PHAs conduct a flat rent impact analysis to determine whether a phase-in is or was necessary. For families whose flat rent is being phased-in, the PHA must multiply the family's current rent amount by 1.35 and compare the result to the flat rent under the PHA's policies. Families who have subsequently been admitted to the program or have subsequently selected flat rent will not experience a phase-in. Notice PIH 2017-23 requires that flat rents must be phased in at the full 35 percent per year. PHAs do not have the option of phasing in flat rent increases at less than 35 percent per year.

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

$$\text{\$500} \times 1.35 = \text{\$675}$$

Since the PHA's increased flat rent of \$700 resulted in a rent increase of more than 35 percent, the PHA offered the family the choice to pay either \$675 per month or an income-based rent.

The flat rent increase was phased in. At their next annual recertification in November 2015, the PHA will again multiply the family's current flat rent by 1.35 and compare the results to the PHA's current flat rent.

Change in Flat Rents

OHA Policy

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

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

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

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

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

EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

24 CFR 5.609

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

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

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

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

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

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

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

(6) Welfare assistance payments.

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

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31¹; and

¹ Text of 45 CFR 260.31 follows (next page).

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

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

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

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

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

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

<p style="text-align: center;">HHS DEFINITION OF "ASSISTANCE"</p>
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45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

260.31 What does the term "assistance" mean?

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

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

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

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

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

(b) [The definition of "assistance"] excludes: (1) Nonrecurrent, short-term benefits that:

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits;

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

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

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

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

24 CFR 5.609

(c) Annual income does not include the following:

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;
(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
- (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for OHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of OHA's governing board. No resident may receive more than one such stipend during the same period of time;
- (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

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

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or prospective monthly amounts.

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

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

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

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

a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));

b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);

c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);

g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);

h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));

k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));

o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

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

q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

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

s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, OHA or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

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

EXHIBIT 6-4: EARNED INCOME DISALLOWANCE

24 CFR 960.255 Self-sufficiency incentive—Disallowance of increase in annual income.

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

Baseline income. The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person who is a member of a qualified family.

(b) *Disallowance of earned income--.* Exclusion from annual income -

(1) *Previously unemployed* includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in public housing:

(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

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

(iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by OHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500.

(b) *Disallowance of increase in annual income.*

(1) *Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, OHA must exclude from annual income (as defined in 5.609 of this title) of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.

(2) *phase-in of rent increase.* Upon the expiration of the 12-month period defined in paragraph (b)(1) of this section and for the subsequent 12-month period, OHA must exclude from the annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

(3) *Maximum 2-year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 24-month period. It applies for a maximum of 12 months for disallowance under paragraph (b)(1) of this section and a maximum of 12 months for disallowance under paragraph (b)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (b)(1) of this section.

(4) Effect of changes on currently participating families. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date.

(c) *Inapplicability to admission.* The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) *Individual Savings Accounts*. As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a OHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

(1) OHA must advise the family that the savings account option is available;

(2) At the option of the family, OHA must deposit in the savings account the total amount that would have been included in tenant rent payable to OHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;

(3) Amounts deposited in a savings account may be withdrawn only for the purpose of:

(i) Purchasing a home;

(ii) Paying education costs of family members;

(iii) Moving out of public or assisted housing; or

(iv) Paying any other expense authorized by OHA for the purpose of promoting the economic self-sufficiency of residents of public housing;

(4) OHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and OHA may not charge a fee for maintaining the account;

(5) At least annually OHA must provide the family with a report on the status of the account; and

(6) If the family moves out of public housing, OHA shall pay the tenant any balance in the account, minus any amounts owed to OHA

EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

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

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

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

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

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

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

Specified welfare benefit reduction.

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

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

- (i) at expiration of a lifetime or other time limit on the payment of welfare benefits;
- (ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or
- (iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

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

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

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

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

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

(d) Review of OHA decision.

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

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

(e) OHA relation with welfare agency.

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

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

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

CHAPTER 7: VERIFICATION [24 CFR 960.259, 24 CFR 5.230 [PIH 2018-18](#)]

INTRODUCTION

OHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and tenants must cooperate with the verification process as a condition of receiving assistance. OHA must not pass on the cost of verification to the family.

OHA will follow the verification guidance ("VG") provided by HUD in PIH Notice 2018-1840-19 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary OHA policies.

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

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

Under MTW Authority, OHA may adopt and implement reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of 24 CFR 982.516 and 982 Subpart E, as necessary to implement the Agency's Annual MTW Plan. MTW process and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard Section 8 rules and regulations apply.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 960.259, 24 CFR 5.230]

The family must supply any information that OHA or HUD determines is necessary to the administration of the program and must consent to OHA verification of that information [24 CFR 960.259(a)(1)].

Consent Forms

It is required that all adult applicants and tenants sign form ~~HUD-9886~~[OHA, Authorization for Release of Information and OHA-290103 Form/Privacy Act Notice, Authorization Release Form](#). The purpose of ~~the~~ form ~~HUD-9886~~ is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and OHA may collect information from State Wage Information Collection Agencies ("SWICAs") and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service ("IRS") and the Social Security Administration ("SSA"). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

[OHA Policy](#)

[OHA may require each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign the HUD approved OHA Authorization Release Form/Privacy Act Notice form in lieu of the form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.](#)

Penalties for Failing to Consent [24 CFR 5.232]

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

[OHA Policy \(pending HUD approval\)](#)

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

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy [Notice PIH 20180 – 189]

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

OHA Policy

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

1. • UIV using EIV including Income Validation Tool (IVT) whenever available
2. • UIV using non-HUD system
3. • Written Third-party Verification
4. • Written Third Party Form
5. • Oral Third Party Verification
6. • ~~Self-Certification~~ Tenant Declaration

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

Requirements for Acceptable Documents

OHA Policy

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

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

Print-outs from web pages are considered original documents.

OHA staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

Any family self-certifications must be made in a format acceptable to OHA and

must be signed in the presence of an OHA representative.

E-File or File Documentation

OHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that OHA has followed all of the verification policies set forth in this ACOP. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached. [This will include but is not limited to EIV and IVT Reports for each new admission, historical adjustment and interim reexamination.](#)

When OHA is unable to obtain third-party verification, OHA will document in the family file the reason that third-party verification was not available [24 CFR 960.259(c)(1); Notice PIH ~~2010-19~~2018-18].

[OHA will document, in the family file, the following:](#)

[Reported family annual income](#)

[Value of assets](#)

[Expenses related to deductions from annual income](#)

[Other factors influencing adjusted income including disputes](#)

[Reason third-party verification was not available](#)

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

Up-front income verification (UIV) refers to OHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to OHA.

~~[OHA restricts access to and safeguards UIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.](#)~~

There may be legitimate differences between the information provided by the family and UIV-generated information. [If the family disputes the accuracy of UIV data ,n](#) No adverse action can be taken against a family until OHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through OHA's informal review/hearing processes. [\(For more on UIV and income projection, see section 6-I.C\)](#)

Using HUD's Enterprise Income Verification (EIV) System (Mandatory)

[OHA must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income in accordance with 24 CFR 5.236 and administrative guidance issued by HUD.](#) HUD's EIV system contains data showing earned income, unemployment benefits, Social Security and SSI benefits for participant families. HUD requires OHA to use the EIV system when available. The following policies will apply when OHA has access to HUD's EIV system.

~~The EIV system contains two main components: tenant income data reports and “exceeds threshold” reports.~~

EIV ~~Income~~ Income -Reports

The data shown on ~~TID~~EIV -income reports is updated ~~quarterly~~regularly. OHA will monitor EIV reports on a regular basis to detect potential subsidy payment errors. Reports that are monitored include but are not limited to: Deceased Tenants, Identity Verification, Income Verification Tool Report (IVT), Immigration, Multiple Subsidy Reports and Failed Effective Date Check Report (Overdue Reexams). Data may be between 3 and 6 months old at the time reports are generated.

OHA Policy

OHA will obtain ~~TID~~income reports for scheduled reexaminations on a ~~monthly~~monthly basis. Reports will be generated as part of the ~~regular~~ reexamination process.

Income reports will be compared to family-provided information as part of the reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6.I.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between ~~TID~~income reports and family-provided information will be resolved as described in Chapter 6.I.C. and in this chapter.

Income reports will be used in ~~interim~~ reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

Income reports will be retained in participant files with the applicable ~~annual or~~interim reexamination documents.

When OHA determines through Income reports and third party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

EIV Discrepancy Reports

The EIV ~~discrepancy~~Income Verification Tool (IVT) report ~~is s~~ a tool for identifying families who may have concealed or under-reported income.

The data shown on IVT reports is updated monthly and provide a comparison between tenant reported income and income information previously reported on the HUD-50058.

~~Data in the discrepancy report represents income for past reporting periods and may be between 6 months and 30 months old at the time reports are generated.~~ Families who have not concealed

or under-reported income may appear on the discrepancy report in some circumstances, such as loss of a job or addition of new family members.

OHA Policy

OHA will generate and review ~~discrepancy~~[an-IVT](#) report every six months. The ETR threshold percentage will be adjusted as necessary based on the findings in the ETRs.

In reviewing the discrepancy report, OHA will begin with the largest discrepancies.

When OHA determines that a participant appearing on the Income Discrepancy Report has not concealed or under-reported income, the participant's name will be placed on a list of "false positive" reviews. To avoid multiple reviews in this situation, participants appearing on this list will be eliminated from discrepancy processing until a subsequent interim or annual reexamination has been completed.

OHA will review the EIV ~~discrepancy-IVT report~~ [tab](#) during processing of ~~annual-regular~~ and interim reexaminations.

When it appears that a family may have concealed or under-reported income, OHA will request third-party written verification of the income in question.

When OHA determines through file review and third party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

EIV Identity Verification

The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on Social Security number, name, and date of birth.

OHA is required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH ~~2010-3~~[2018-18](#)].

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

OHA Policy

OHA will identify participants whose identity verification has failed [by reviewing EIV's Identity Verification Report on a monthly basis](#) as part of the annual reexamination process.

OHA will attempt to resolve PIC/SSA discrepancies by [obtaining appropriate documentation from the participant](#).~~reviewing file documents.~~

When OHA determines that discrepancies exist due to OHA errors such as spelling errors or incorrect birth dates, the errors will be corrected.

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

~~Reasonable Effort and Timing~~

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

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to OHA by the family. If written third-party verification is not available, OHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

OHA Policy

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

~~OHA will make a minimum of one attempt, which may be oral, to obtain third-party verification. A record of each attempt to contact the third-party source (including no answer calls) and all contacts with the source will be documented in the file. Regarding third-party oral verification, OHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.~~

Written Third-Party Verification [Notice PIH 20180-189]

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

OHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages. For new income sources or when two pay stubs are not available, OHA will project income based on the information from a traditional written third-party verification form or the best available information.

OHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

OHA Policy

Third-party documents provided by the family must be dated within 60 days of OHA request date.

If OHA determines that third-party documents provided by the family are not acceptable, OHA will explain the reason to the family and request additional documentation.

As verification of earned income, OHA will require the family to provide the two most current, consecutive pay stubs.

Written Third-Party Verification Form

When upfront verification is not available and the family is unable to provide written third-party documents, OHA must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

A written third-party verification form is mandatory when there is an unreported source of income or a substantial difference in reported income (\$2400 annually or more) and there is no UIV or tenant-provided documentation to support the income discrepancy.

[OHA must rely on documents that originate from a third-parties computerized system and/or database.](#)

OHA Policy

OHA will send third-party verification forms directly to the third party.

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

Oral Third-Party Verification [Notice PIH [2010-192018-18](#)]

For third-party oral verification, OHA contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

OHA should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

OHA Policy

In collecting third-party oral verification, OHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification OHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

When Third-Party Information is late

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

When Third-Party Verification is Not Required [Notice PIH [2010-192018-18](#)]

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

OHA Policy

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

If OHA cannot obtain third party documentation, OHA will note in the client file why third-party verification was not available.

Primary Documents

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

Imputed Assets

OHA may accept a self-certification from the family as verification of assets disposed of for less than fair market value. [HCV GB, p. 5-28].

OHA Policy

OHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value

Value of Assets and Asset Income [24 CFR 960.259]

For families with net assets totaling \$5,000 or less, OHA may accept the family's declaration of asset value and anticipated asset income. However, OHA is required to obtain third-party verification of all assets regardless of the amount during the intake process, whenever a family member is added, and at least every three years thereafter. If third party verification is not available OHA must document in the file why it was not available.

OHA Policy

~~OHA will require all families to provide verification of the value of assets and asset income in all cases. For families with net assets totaling \$5,000 or less, OHA will accept the family's self-certification of the value of family assets and anticipated asset income when applicable. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration.~~

OHA will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every three years thereafter.

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

7-I.E. SELF-CERTIFICATION Tenant Declaration [PIH 2018-18]

When HUD requires third-party verification, self-certification, or "tenant declaration," is used as a last resort when OHA is unable to obtain third-party verification and is when the tenant submits an affidavit or notarized statement of reported income and/or expenses to OHA.

Self-certification, however, is an acceptable form of verification when:

- ~~7.~~ ● A source of income is fully excluded
- ~~8.~~ ● Net family assets total \$5,000 or less and OHA has adopted a policy to accept self
- ~~9.~~ certification at annual recertification, when applicable
- ~~10.~~ ● OHA has adopted a policy to implement streamlined annual recertifications for fixed
- sources of income (See Chapter 9)
- ~~11.~~

When OHA was required to obtain third-party verification but instead relies on a tenant declaration for verification of income, assets, or expenses, the family’s file must be documented to explain why third-party verification was not available.

OHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to OHA.

OHA may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to OHA and must be signed by the family member whose information or status is being verified. All self- certifications must be signed in the presence of an OHA representative [or OHA notary public.](#)

[OHA will document in the tenant file why third-party verification was not available.](#)

PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

OHA Policy

OHA will require families to furnish verification of legal identity for each household member.

Primary Verification Documents

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Current, valid driver's license or California identification card or	Certificate of birth or
Current U.S. Passport or	Permanent Residence ID or

U.S. Military Identification Cards or	Adoption papers or custody agreement or
Permanent Residence ID	Health and Human Services ID or
	Certified School records

If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required. If none of the primary documents is available to establish legal identity for adults, OHA will require any two of these documents:

1. Original copy of a certificate of birth
2. Alien Registration Receipt Card (Form I-155)
3. Temporary Resident Card (Form I-688)
4. Arrival-Departure Record (Form I-94)
5. Consulate or city issued identification cards
6. Church-issued baptismal certificate
7. U.S. military discharge (DD 214)
8. Voter’s registration card
9. Company/agency identifications cards

If none of these documents can be provided, then the case will be forward to the department director, who will make the determination based on regulations.

At the time of admission if you are unable to provide one of the documents required in the first group, legal identity will have to be verified through the use of fingerprinting.

7-ILB. SOCIAL SECURITY NUMBERS [24 CFR 5.216, PIH 2012-10, as amended by MTW]

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include, existing residents who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

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

1. An original SSN card issued by the Social Security Administration (SSA)
2. An original SSA-issued document, which contains the name and SSN of the individual
3. An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

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

OHA Policy

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

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of program admission, an otherwise eligible family may be admitted and must provide documentation of the child's SSN within 90 days. A 90-day extension will be granted if OHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control.

OHA Policy

OHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a resident requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the resident must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. OHA may not add the new household member until such documentation is provided.

When a resident requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the resident must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if OHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control. During the period OHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

OHA Policy

OHA will grant one additional 90-day extension if needed for reasons beyond the resident's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during continuously-assisted occupancy.

OHA Policy

OHA will verify each disclosed SSN by:

Obtaining documentation from applicants and residents that is acceptable as evidence of social security numbers

Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

Once the individual's verification status is classified as "verified," OHA may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

OHA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, OHA will remove and destroy copies of documentation accepted as evidence of social security numbers

~~If any family member obtains an SSN after admission to the program, the new SSN must be disclosed at the next interim or regularly scheduled reexamination.~~

~~The social security numbers of household members, such as live-in aides, must be verified for the purpose of conducting criminal background checks.~~

7-II.C. DOCUMENTATION OF AGE

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

OHA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, OHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification. Refer to self-certification procedures.

Age must be verified only once during continuously-assisted occupancy.

7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

OHA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage or Registered Domestic Partnerships

OHA Policy

Certification by the head of household is normally sufficient verification. If OHA has reasonable doubts about a marital relationship or registered domestic partnership status, OHA will require the family to document the ~~marriage with a marriage certificate or other documentation to verify that the couple is married.~~ Relationship.

~~In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).~~

Separation or Divorce

OHA Policy

Certification by the head of household is normally sufficient verification. If OHA has reasonable doubts about a separation or divorce, OHA will require the family to document the divorce, or separation with a certified copy of a divorce decree, signed by a court officer, a copy of a court-ordered maintenance or other court record; or other documentation that shows a couple is divorced or separated.

If no court document is available, documentation from a community-based agency will be accepted.

Absence of Adult Member

OHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

Foster Children and Foster Adults

OHA Policy

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

7-II.E. VERIFICATION OF STUDENT STATUS

OHA Policy

OHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

The family claims full-time student status for an adult other than the head, spouse, or co- head, or the family claims a child care deduction to enable a family member to further his or her education.

7-II.F. DOCUMENTATION OF DISABILITY

OHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. OHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. OHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If OHA receives a verification document that provides such information, OHA will not place this information in the tenant file. Under no circumstances will OHA request a resident's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at www.os.dhhs.gov.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

Verification of receipt of SSA benefits or SSI based upon disability is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions [VG, p. 23].

OHA Policy

For family members claiming disability who receive SSI or other disability payments from the SSA, OHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification ("EIV") system when it is available, or HUD's Tenant Assessment Subsystem ("TASS"). If documentation from HUD's EIV System or TASS is not available, OHA will request a current (dated within the last 120 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), OHA will ask the family or assist the family in requesting a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov. Once the applicant or resident receives the benefit verification letter they will be required to provide it to OHA.

Family Members Not Receiving SSA Disability Benefits

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603, ~~necessary to qualify for the site-based waiting list preferences or certain income disallowances and deductions.~~

OHA Policy

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]

Overview

Housing assistance is not available to ~~families that include at least one member who is~~ persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. See the Eligibility chapter for detailed discussion of eligibility requirements. This chapter (7) discusses HUD and OHA's 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 non-citizen or an ineligible non-citizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy [24 CFR 5.508(g)(5)].

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

OHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

OHA Policy

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

Eligible Immigrants

Documents Required

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible non-citizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

OHA Verification [HCV-GB, pp 5-3 and 5-7]

For family members under the age of 62 who claim to be eligible immigrants, OHA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

For family members who are age 62 or older are eligible immigrants. No further verification of eligible immigration status is required. Proof of age is required in manner described in 7-II.C. OHA will follow all USCIS protocols for verification of eligible immigration status.

OHA will follow all USCIS protocols for verification of eligible immigration status.

[OHA will monitor the EIV Immigration report on a monthly basis for subsidy payment errors.](#)

7-II.H. VERIFICATION OF PREFERENCE STATUS

OHA must verify any preferences claimed by an applicant [that determined his or her placement on the waiting list.](#)

7-II.I. VERIFICATION OF STATE LIFETIME SEX OFFENDER REGISTRATION

[Notice: PIH 2012-28]

OHA Policy

Regularly scheduled documents will include a question asking whether the participant or any member of the participant's household is subject to a lifetime sex offender registration program in any state.

OHA will verify sex offender information using the California Megan's Law website and the Dru Sjodin National Sex Offender Database website or other certified criminal search vendors and National databases; and document this information in the same method used at admission.

For any admissions after June 25, 2001 (the effective date of the Screening and Eviction for Drug Abuse and Other Criminal Activity final rule), if the reexamination screening reveals that the participant or a member of the participant's household is subject to a lifetime sex offender registration requirement, or that the participant has falsified information or otherwise failed to disclose his or her criminal history on their reexamination forms, OHA will pursue termination of tenancy to the extent allowed by their lease and state or local law.

Notwithstanding the above, if the participant or member of the participant's household, regardless of when they were admitted, commits criminal activity while living in federally assisted housing, OHA will pursue eviction or termination of tenancy to the extent allowed by their lease and state or local law.

PART III: VERIFYING INCOME AND ASSETS

Chapter 6, Part I of this ACOP describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides OHA policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

OHA Policy

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year. For wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

7-III.B. BUSINESS AND SELF-EMPLOYMENT INCOME

OHA Policy

Business owners and self-employed persons will be required to provide:

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year. If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

OHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination, OHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, OHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve months, OHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 9.

Social Security/SSI Benefits

OHA Policy

To verify the SS/SSI benefits of residents, OHA will obtain information about social security/SSI benefits through The HUD EIV System or the TASS.

If benefit information is not available in HUD systems, OHA will assist the family in requesting benefit verification letter by either calling SSA at 1-800-772- 1213, or by requesting it from www.ssa.gov.

Once the resident has received the benefit verification letter they will be required to provide it to OHA.

7-III.D. ALIMONY OR CHILD SUPPORT

OHA Policy

The way OHA will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it *receives regular payments*, verification will be sought in the following order:

1. If payments are made through a state or local entity, OHA will request a record of payments for the past 12 months and request that the entity disclose any known information about the likelihood of future payments. Third-party verification from the person paying the support is not required if ~~the Authority~~OHA is able to obtain documentation from the state or local entity.
2. Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules
3. Copy of the latest check and/or payment stubs
4. Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received
5. If the family declares that it *receives irregular or no payments*, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:
 6. A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts
 7. If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.

7-III.E. ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. OHA needs to verify only those certifications that warrant documentation. ~~[HCV GB, p. 5-28].~~

OHA Policy

Using available and verifiable resources, OHA will verify, through the director or designee, the value of assets disposed of only if: OHA does not already have a reasonable estimation of its value from previously collected information, or the amount reported by the family in the certification appears obviously in error.

7-III.F. NET INCOME FROM RENTAL PROPERTY

OHA Policy

The family must provide:

~~1.~~ 1. A current executed lease for the property that shows the rental amount or certification from the current tenant

~~2.~~ 2. A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, OHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

7-III.G. RETIREMENT ACCOUNTS

OHA Policy

Families will be required to report retirement accounts. OHA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts. ~~When third-party verification is not available~~ The type of original document that will be accepted depends upon the family member's retirement status.

Before retirement, OHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, OHA will accept an original document from the entity holding

the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

After retirement, OHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments

7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I. OHA must obtain verification for income exclusions only if, without verification, OHA would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, OHA will confirm that OHA records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

For fully excluded income, OHA is **not** required to follow the verification hierarchy, document why third-party verification is not available, or report the income on the 50058. Fully excluded income is defined as income that is entirely excluded from the annual income determination (for example, food stamps, earned income of a minor, or foster care funds) [Notice PIH 2013-04].

OHA may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, OHA have the option of requiring additional verification.

For partially excluded income, OHA **is** required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student, or income excluded under the earned income disallowance).

OHA Policy

OHA will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, OHA will report the amount to be excluded as indicated on documents provided by the family.

7-III.I. ZERO ANNUAL INCOME STATUS

Families claiming to have no annual income will be required to execute verification forms to determine that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by the household. The families on zero income status will be evaluated every ~~90~~ 120 days.

[OHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, and earnings are not being received by families claiming to have zero annual income.](#)

PART IV: VERIFYING MANDATORY DEDUCTIONS

7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that OHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

Dependent Deduction

See Chapter 6 (6-II.B.) for a full discussion of this deduction. OHA will verify that:

1. Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or co-head of the family and is not a foster child
2. Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

Elderly/Disabled Family Deduction

See the Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. OHA will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

7-IV.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

OHA Policy

OHA will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

1. Written Third-party verification form signed by the provider, when possible
2. If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case, OHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. OHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

3.● If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months

In addition, OHA must verify that:

1.● The household is eligible for the deduction.

2.● The costs to be deducted are qualified medical expenses.

3.● The expenses are not paid for or reimbursed by any other source.

4.● Costs incurred in past years are counted only once.

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62 or a person with disabilities. OHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter, and as described in Chapter 7 (7-IV.A) of this plan.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for OHA's policy on what counts as a medical expense.

Unreimbursed Expenses

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

OHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

Expenses Incurred in Past Years

OHA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, OHA will verify:

⊖● The anticipated repayment schedule

⊖● The amounts paid in the past, and

1. Whether the amounts to be repaid have been deducted from the family's annual income in past years

7-IV.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

Attendant Care

OHA Policy

OHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

1. Third-party verification form signed by the provider, when possible
2. If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source
3. If third-party or ~~document review~~ verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months

Auxiliary Apparatus

OHA Policy

Expenses for auxiliary apparatus will be verified through:

1. Third-party verification of anticipated purchase costs of auxiliary apparatus
2. If third-party verification is not possible, billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months
3. If third-party or ~~document review~~ verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, OHA must verify that:

1. The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
2. The expense permits a family member, or members, to work (as described in 6-II.E.).

3. The expense is not reimbursed from another source (as described in 6-II.E.).

Family Member is a Person with Disabilities

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. OHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work

OHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

OHA Policy

OHA will seek third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third-party and ~~document review~~ verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

Unreimbursed Expenses

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

OHA Policy

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source. The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, OHA must verify that:

- The child is eligible for care (12 years or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.
- ~~pursue an eligible activity.~~
- The costs are for an allowable type of child care.
- The costs are reasonable in accordance with Alameda County Self Sufficiency Index.

Eligible Child

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. OHA will verify that the child being cared for (including foster children) is under the age of 13. (See 7-II.C.)

Unreimbursed Expense

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

OHA Policy

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

Pursuing an Eligible Activity

OHA must verify that the family member(s) the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

OHA Policy

Information to be Gathered

OHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and

any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

Whenever possible, OHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases, OHA will request verification from the agency of the member's job-seeking efforts to date and require the family to submit to OHA any reports provided to the other agency.

In the event third-party verification is not available, OHA will provide the family with a form on which the family member must record job search efforts. OHA will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

OHA will ask the academic or vocational educational institution to verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

Gainful Employment

OHA will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

OHA Policy

OHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

OHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

OHA will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses

Only reasonable child care costs can be deducted.

OHA Policy

The actual costs the family incurs will be compared with OHA's established standards, which are the Alameda County expense limits of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

If the family presents a justification for costs that exceed typical costs in the area, OHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

**EXHIBIT 7-1: EXCERPT FROM HUD VERIFICATION GUIDANCE
NOTICE (PIH 2004-01, pp. 11-14)**

Level	Verification Technique	Ranking
6	Upfront Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system (not available for income verifications of applicants)	Highest (Mandatory)
5	Upfront Income Verification (UIV) using non-HUD system	Highest (Optional)
4	Written third Party Verification	High (Mandatory to supplement EIV-reported income sources and when EIV has no data; Mandatory for non-EIV reported income sources; Mandatory when tenant disputes EIV-reported employment and income information <u>and</u> is unable to provide acceptable documentation to support dispute)
3	Written Third Party Verification Form	Medium-Low (Mandatory if written third party verification documents are not available or rejected by the PHA; and when the applicant or tenant is unable to provide acceptable documentation)
2	Oral Third Party Verification	Low (Mandatory if written third party verification is not available)
1	Tenant Declaration	Low (Use as a last resort when unable to obtain any type of third party verification)

Exhibit 7-2: Summary of Documentation Requirements for Non-citizens (HCV GB, pp. 5-9 and 5-10)

<ul style="list-style-type: none"> 1. All non-citizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to OHA. 2. Except for persons 62 or older, all non-citizens must sign a verification consent form. 3. Additional documents are required based upon the person's status. 	
<p>Elderly Non-Citizens</p> <ul style="list-style-type: none"> 1. 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. 	
<p>All Other Non-Citizens</p> <ul style="list-style-type: none"> 1. Non-citizens who claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below. 	
<ul style="list-style-type: none"> 1. Form I-551 Alien Registration Receipt Card (for permanent resident aliens) 2. Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> 1. "Admitted as a Refugee Pursuant to Section 207" 2. "Section 208" or "Asylum" 3. "Section 243(h)" or "Deportation Stayed by Attorney General" 4. "Paroled Pursuant to Section 221 (d)(5) of the USCIS" 	<ul style="list-style-type: none"> 5. Form I-94 Arrival-Departure Record with no annotation, accompanied by: <ul style="list-style-type: none"> 1. A final court decision granting asylum (but only if no appeal is taken) 2. A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/01/90) 3. A court decision granting withholding of deportation 4. A letter from an asylum officer granting withholding of deportation (if application filed on or after 10/01/90)
<ul style="list-style-type: none"> 1. Form I-688 "Temporary Resident Card" annotated "Section 254A" or "Section 210" 	<ul style="list-style-type: none"> 1. Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274. 12"
<ul style="list-style-type: none"> 1. 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 2. 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 	

CHAPTER 13

LEASE TERMINATIONS

INTRODUCTION

Either party to the dwelling lease agreement may terminate the lease in accordance with the terms of the lease. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program. OHA has the authority to terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations specify when termination of the lease is mandatory by OHA.

When determining OHA policy on terminations of the lease, OHA must consider state and local landlord-tenant laws in the area where OHA is located. Such laws could vary from one location to another and these variances may be either more or less restrictive than federal law or HUD regulations.

This chapter presents the policies that govern both the family's and OHA's termination of the lease voluntary termination of the lease by the family and the mandatory and voluntary termination of the lease by OHA. It is presented in four parts:

Part I: Termination by Tenant. This part discusses the OHA's requirements for voluntary termination of the lease by the family.

Part II: Termination by OHA - Mandatory. This part describes circumstances when termination of the lease by OHA is mandatory. This part also explains nonrenewal of the lease for noncompliance with community service requirements.

Part III: Termination by OHA – Other Authorized Reasons. This part describes OHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes OHA to terminate. For some of these options, HUD requires OHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options, OHA has full discretion whether to consider the options as just cause to terminate as long as OHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that OHA may consider in lieu of termination, and criteria OHA will use when deciding what actions to take.

Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and OHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

PART I: TERMINATION BY TENANT

13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the property site office or sent by pre-paid first-class mail, properly addressed.

OHA Policy

If a family desires to move and terminate their tenancy, they must give at least 30 calendar days' advance written notice to OHA of their intent to vacate. If the tenant vacates prior to the end of the thirty (30) days, they will be responsible for rent through the end of the notice period or until the unit is re-rented, whichever occurs first.

The notice of lease termination must be signed by the head of household, spouse, or co-head.

PART II: TERMINATION BY OHA – MANDATORY

13-II.A. OVERVIEW

HUD requires mandatory termination of the lease for certain actions or inactions of the family. There are other actions or inactions of the family that constitute *grounds* for lease termination, but the lease termination is not mandatory. OHA must establish policies for termination of the lease in these cases where termination is optional for OHA.

For those tenant actions or failures to act where HUD requires termination, OHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires OHA to terminate the lease.

13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]

OHA must terminate the lease if any family member fails to sign and submit any consent form she/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]

OHA must terminate the lease if (1) a family fails to submit required documentation within the required time frame concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by OHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible non-citizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

13-II.D. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS[24 CFR 5.218(c) and 24 CFR 960.259(a)(3), Notice PIH 2012-10]

OHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and OHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, OHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date OHA determined the family to be noncompliant.

OHA Policy

OHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline

13-II.E. FAILURE TO ACCEPT OHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]

OHA must terminate the lease if the family fails to accept OHA's offer of a lease revision to an existing lease, provided OHA has done the following:

- The revision is on a form adopted by OHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and the Resident Advisory Board and their opportunity to present comments.
- OHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- OHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to OHA policies for offering lease revisions.

13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]

OHA must immediately terminate the lease if OHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

See Part 13-III.B. below for the HUD definition of *premises*.

13-II.G. LIFETIME REGISTERED SEX OFFENDERS [Notice PIH 2012-28]

Should a OHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, OHA must immediately terminate assistance for the household member.

In this situation, OHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, OHA must terminate assistance for the household.

13-II.H. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]

OHA is prohibited from renewing the lease at the end of the 12-month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

13-II.I. DEATH OF SOLE FAMILY MEMBER [NOTICE PIH 2012-10]

OHA must immediately terminate the lease following the death of the sole family member.

PART III: TERMINATION BY OHA – OTHER AUTHORIZED REASONS

13-III.A. OVERVIEW

Besides requiring OHA to terminate the lease under the circumstances described in Part II, HUD requires OHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require OHA to terminate for such violations in all cases. OHA has the discretion to consider circumstances surrounding the violation or in applicable situations OHA may, as an alternative to termination, require the exclusion of the culpable household member.

In addition, HUD authorizes OHA to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. OHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

In the development of the terms of the lease, OHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords OHA wide discretion in some areas, a broad range of policies could be acceptable. OHA, ~~with some restrictions,~~ also has the option to terminate the tenancies of certain families who are over income families.

OHA may consider alternatives to termination and must establish policies describing the criteria OHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps OHA must take when terminating a family's lease.

13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(i)(5), Notice PIH 2015-19]

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations..

***Definitions* [24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

- *Affiliated individual* is defined in section 16-VII.B.
- *Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.
- *Criminal Record* means any record or report compiled by a local, state, or federal law enforcement agency containing information related to a person's involvement in criminal activity. These records include, but are not limited to police reports, arrest reports, conviction records, or other information maintained by law enforcement through a database.
- *Criminal Conviction Record* means a record obtained from the California Law Enforcement Telecommunication System (CLETS) of the National Crime Information Center (NCIC) which contains criminal conviction information.
- *Dating violence* is defined in section 16-VII.B.
- *Domestic violence* is defined in section 16-VII.B
- *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].
- *Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.
- *Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.
- *Household* means the family and an OHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].
- *Other person under the tenant's control* means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.
- *Premises* means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.
- *Prohibited tobacco products* are defined as products requiring the ignition of tobacco, such as (but not limited to) cigarettes, cigars, pipes, hookahs, water pipes, as well as Electronic Nicotine Delivery System (ENDS) such as, but not limited to, e-cigarettes, personal vaporizers, vape pens, e-cigars, e-hookahs, and vaping

- devices.
- *Restricted areas* are public housing dwelling units (except those in a mixed-finance project), public housing administrative office buildings, public housing community rooms or community facilities, public housing day care centers and laundry rooms, and all outdoor areas up to 25 feet from the buildings or units for which this policy is applicable.
 - *Sexual assault* is defined in section 16-VII.B.
 - *Stalking* is defined in section 16-VII.B.

- *Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

Drug Crime on and/or about the Premises [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

OHA Policy

OHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

OHA will consider all credible evidence, including but not limited to, any record convictions of covered persons related to the drug-related criminal activity.

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

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate the lease.

Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that OHA may evict a family when OHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

OHA Policy

OHA will terminate the lease when OHA determines that a household member is illegally using a drug or OHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months.

OHA will consider all credible evidence, including but not limited to, any record of convictions of household members related to the use of illegal drugs.

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

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate the lease.

Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including OHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

OHA Policy

OHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, OHA employees, contractors, or by persons residing in the immediate vicinity of the premises.

Immediate vicinity means within a three-block radius of the premises.

OHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

OHA may not base a determination that a household engaged in criminal activity warranting termination of assistance or eviction on a record of arrest(s).

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate the lease.

Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]

OHA will terminate the lease if OHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

OHA will consider all credible evidence, including but not limited to, any record of convictions of household members related to the abuse of alcohol.

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

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of

such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate the lease.

Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]

OHA will terminate the lease if it determines that a household member has furnished false or misleading information concerning illegal drug use or alcohol abuse

OHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate the lease.

Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f), Instituting Smoke-Free Public Housing Rule FR-5597-F-03]

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations, and grounds for termination. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

OHA Policy

OHA will terminate the lease for the following violations of tenant obligations under the lease:

Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due);

Repeated late payment of rent or other charges. Four late payments within a 12-month period shall constitute a repeated late payment as articulated in section 8(A)(5) of OHA rental agreement.

Failure to fulfill the following household obligations:

- Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
- Not to provide accommodations for boarders or lodgers
- To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose
- To abide by necessary and reasonable regulations promulgated by OHA for the benefit and well-being of the housing project and the tenants, which shall be posted in the project office and incorporated by reference in the lease
- To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety
- To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition
- To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner

- To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators
- To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project
- To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest
- To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition

Any smoking of prohibited tobacco products in any units covered by 24 CFR 965, subpart G, in any restricted areas, as defined by 24 CFR 966.656(a), or in other outdoor areas that OHA has designated as smoke-free.

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate the lease.

13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]

HUD authorizes OHA to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as “other good cause.”

Other Good Cause [24 CFR 966.4(l)(2)(ii)(B) and (C)]

HUD regulations state that OHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit OHA to only those examples. The Violence Against Women Reauthorization Act of 2013 explicitly prohibits OHA from considering incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking as “other good cause” for terminating the assistance, tenancy or occupancy rights of the victim or threatened victim of such violence as provided in the regulations [24 CFR 5.2005(c)(1)].

OHA Policy

OHA will terminate the lease for the following reasons.

Fugitive Felon or Parole Violator. If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violates a condition of probation or parole imposed under federal or state law

Persons subject to sex offender registration requirement. If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.

Discovery after admission of facts that made the tenant ineligible

Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income

Failure to furnish such information and certifications regarding family composition and income as may be necessary for OHA to make determinations with respect to rent, eligibility and the appropriateness of dwelling size that may include annual and interim recertification and any other OHA required inspections

Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by OHA that such a dwelling unit is available

Failure to permit access to the unit by OHA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists

Failure to promptly inform OHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.

Failure to abide by the provisions of OHA pet policy

Failure to comply with any material provision of an OHA Use of Space License Agreement pertaining to temporary relocation

If the family has breached the terms of a repayment agreement entered into with OHA

If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises

If a household member has engaged in or threatened violent, criminal, or abusive behavior toward OHA personnel or contractors.

Abusive or violent behavior towards OHA personnel or contractors includes verbal as well as physical abuse or violence. Use of racial epithets, profanity, or other language, written or oral that is customarily used to intimidate may be considered abusive or violent behavior.

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

In making its decision to terminate the lease, OHA will consider alternatives as described in Section 13-III.D and other factors described in Section 13-III.E. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate the lease.

Family Absence from Unit [24 CFR 982.551(i)]

It is reasonable that the family may be absent from the public housing unit for brief periods. However, OHA has a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

OHA Policy

The family must supply any information or certification requested by OHA to verify that the family is living in the unit, or relating to family absence from the unit, including any OHA-requested information or certification on the purposes of family absences. The family must cooperate with OHA for this purpose.

The family must promptly notify OHA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. In such a case, *promptly* means within 10 business days of the start of the extended absence.

If a family is absent from the public housing unit for more than 180 consecutive days, and the family does not adequately verify that they are living in the unit, OHA will terminate the lease for other good cause.

Abandonment of the unit. If the family appears to have vacated the unit without giving proper notice, OHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit.

OHA Policy

OHA will consider a unit to be abandoned when a resident has both fallen behind in rent and has clearly indicated by words or action an intention not to continue living in the unit. If necessary, OHA will secure the unit immediately to prevent vandalism and other criminal activity

When a unit has been abandoned, OHA will comply with Code of Civil Procedure sections 1980 *et seq.* in disposition of any property left at the rental dwelling.

Over-Income Families [24 CFR 960.261; and FR 11/26/047/26/18, p. 68786]

~~Subject to certain restrictions, HUD authorizes OHA to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, OHA may not evict or terminate the tenancy of a family solely because the family is over income if: (1) the family has a valid contract of participation in the Family Self-Sufficiency (FSS) program, or (2) the family is currently receiving the earned income disallowance. This rule does not require OHA to evict over income residents, but rather gives OHA the discretion to do so thereby making units available for applicants who are income eligible.~~

The Housing Opportunity Through Modernization Act (HOTMA) of 2016 placed an income limitation on public housing tenancies. The over-income requirement states that after a family's income has exceeded 120 percent of area median income (AMI) (or a different limitation established by the secretary) for two consecutive years, OHA must either terminate the family's tenancy within six months of the determination, or charge the family a monthly rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit, including amounts from the operating and capital funds, as determined by regulations. OHA also has the discretion, under 24 CFR 960.261, to adopt policies allowing termination of tenancy for families whose income exceeds the limit for program eligibility. Such policies would exempt families participating in the Family Self-Sufficiency (FSS) program or currently receiving the earned income disallowance.

OHA Policy

At annual or interim reexamination, if a family's income exceeds the applicable overincome limit, the PHA will document the family file and begin tracking the family's over-income status.

If one year after the applicable annual or interim reexamination the family's income continues to exceed the applicable over-income limit, OHA will notify the family in writing that their income has exceeded the over-income limit for one year, and that if the family continues to be over-income for 12 consecutive months, the family will be subject to OHA's over-income policies.

If two years after the applicable annual or interim reexamination the family's income continues to exceed the applicable over-income limit, OHA will charge the family a rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit. OHA will notify the family in writing of their new rent amount. The new rent amount will be effective 30 days after the OHA's written notice to the family.

If, at any time, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with PHA policy. If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification. OHA will notify the family in writing that over-income policies no longer apply to them. If the family's income later exceeds the over-income limit again, the family is entitled to a new two-year grace period.

OHA will not evict or terminate the tenancies of families [whose income exceeds the income limit for program eligibility as described at 24 CFR 960.261](#) ~~solely because they are over income.~~

[When HUD issues guidance and noticing and reporting on overincome tenancies, OHA will comply with the guidance.](#)

13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY

Exclusion of Culpable Household Member [24 CFR 966.4(i)(5)(vii)(C)]

As an alternative to termination of the lease for criminal activity or alcohol abuse, HUD provides that OHA may consider exclusion of the culpable household member. Such an alternative can be used, by OHA, for any other reason where such a solution appears viable.

Additionally, under the Violence against Women Reauthorization Act of 2013, OHA may bifurcate a lease in order to terminate the tenancy of an individual who is a tenant or lawful occupant of a unit and engages in criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking.

OHA Policy

OHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon OHA's request.

Repayment of Family Debts

OHA Policy

If a family owes past monetary amounts to OHA, as a condition of continued occupancy, OHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from OHA of the amount owed. See Chapter 16 for policies on repayment agreements.

13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY

If OHA has grounds to terminate a tenancy it is not required to do so, except as explained in Part II of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

Evidence [24 CFR 982.553(c)]

For criminal activity, HUD permits OHA to terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

OHA Policy

OHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that OHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

OHA Policy

OHA will consider the following circumstances before deciding whether to terminate the lease for any of the HUD-required lease provisions or for any other reasons:

- The seriousness of the offending action, especially with respect to how it would affect other residents safety or peaceful and quiet enjoyment property
- The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor or a person with disabilities or (as discussed further in section 13-II.F) a victim of domestic violence, dating violence, sexual assault or stalking.”
- The effects that the eviction will have on other family members who were not involved in the action or failure to act

- The effect on the community of the termination, or of OHA’s failure to terminate the tenancy
- The effect of OHA’s decision on the integrity of the public housing program
- The demand for housing by eligible families who will adhere to lease responsibilities The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family’s recent history, and the likelihood of favorable conduct in the future.

While OHA may not base a determination that a household engaged in criminal activity warranting termination or eviction on an arrest record, it may use an arrest to trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, OHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. OHA may also consider:

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

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.

For-Cause Eviction Guidelines

The For-Cause Eviction Guidelines are intended for use by OHA’s Property Management staff to implement existing OHA occupancy policies regarding tenant evictions for causes such as drug-related, nuisance, weapons-related and/or violent criminal activities. These guidelines apply to criminal activities that threaten the health, safety or right to peaceful enjoyment of the premises by other residents...

These guidelines are consistent with the OHA’s commitment to make every reasonable effort to promote safer public housing communities and assure that residents are given legitimate opportunities for successful program participation.

The decision whether to initiate proceedings to terminate tenancy in all For-Cause evictions remains a matter of judgment. Staff of OHA will consider all circumstances with each individual case.

The Deputy Executive Director for the Office of Property Operations or his designee is required to review all For-Cause Evictions.

Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]

HUD authorizes OHA to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

OHA Policy

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, OHA will consider whether such household member has successfully completed a supervised drug or alcohol rehabilitation program.

For this purpose OHA will require the tenant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program

Reasonable Accommodation [24 CFR 966.7]

If the family includes a person with disabilities, OHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

OHA Policy

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

Nondiscrimination Limitation [24 CFR 966.4(l)(5)(vii)(F)]

OHA's eviction actions are consistent with fair housing and equal opportunity provisions of 24CFR 5.105.

13-III.F. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING

This section addresses the protections against termination of assistance that the Violence against Women Act of 2013 (VAWA) provides for victims of domestic violence, dating violence, sexual assault and stalking. For general VAWA requirements and OHA policies pertaining to notification, documentation, and confidentiality, see section 16-VII of this policy, where definitions of key VAWA terms are also located.

VAWA Protections against Termination [24 CFR 5.2005(c)]

VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed either as serious or repeated violations of the lease by the victim or threatened victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1) , FR Notice 8/6/13].

Limitations on VAWA Protections [24 CFR 5.2005(d) and (e), FR Notice 8/6/13]

VAWA prohibits a OHA from using domestic violence, dating violence, sexual assault, or stalking as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit the authority of OHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, or stalking so long as OHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].
- VAWA does not limit the authority of OHA to terminate the tenancy of a victim of domestic violence, dating violence, sexual assault or stalking if OHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

In order to demonstrate an actual and imminent threat, OHA must have objective evidence of works, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a OHA to terminate the victim’s assistance “only when there are no other actions that could be taken to reduce or eliminate the threat” including but not limited to transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat” [24 CFR 5.2005(d)(3)]. Additionally, HUD regulations state that restrictions “predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents” [24 CFR 5.2005(d)(3)].

OHA Policy

In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, OHA will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or a tenant other than the victim of domestic violence, dating violence, sexual assault or stalking
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within a short period of time
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest OHA’s determination that he or she is an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

Documentation of Abuse [24 CFR 5.2007]

OHA Policy

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault or stalking claims protection under VAWA, OHA will request in writing that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this plan.

OHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases OHA will document the waiver in the individual's file.

Terminating or Evicting a Perpetrator Domestic Violence

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives OHA the explicit authority to bifurcate a lease, or remove a household member from a lease, "in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing" [FR Notice 8/6/13]. Moreover, HUD regulations impose on OHA the obligation to consider lease bifurcation in any circumstances involving domestic violence, dating violence, or stalking [24 CFR 966.4(e)(9)].

Specific lease language affirming OHA's authority to bifurcate a lease is not necessary, and the authority supersedes any local, state, or federal law to the contrary. However, if OHA chooses to exercise its authority to bifurcate a lease, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance. This means that OHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [FR Notice 3/16/07]. [However, perpetrators should be given no more than 30 days' notice of termination in most cases \[Notice PIH 2017-08\].](#)

OHA Policy

OHA will bifurcate a family's lease and terminate the tenancy of a family member if OHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, non-culpable family members.

In making its decision, OHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-[500665382](#)) or other documentation of abuse submitted to OHA by the victim in accordance with this section and section 16-VII.D. OHA will also consider the factors in section 13.III.E Upon such

consideration, OHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If OHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this ACOP. If the person removed from the lease was the only tenant eligible to receive assistance, OHA must provide any remaining tenant a chance to establish eligibility for the unit. If the remaining tenant cannot do so, OHA must provide the tenant reasonable time to find new housing or to establish eligibility for another housing program covered by VAWA 2013.

PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING

13-IV.A. OVERVIEW

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]

HUD authorizes OHA to conduct criminal records checks on public housing residents for lease enforcement and eviction. OHA policy determines when OHA will conduct such checks.

OHA Policy

OHA may conduct criminal records checks when it has come to the attention of OHA, either from local law enforcement or by other means that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. A In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

All criminal record checks will be conducted in conjunction with a current criminal investigation, and information will be provided to staff on a “needs-to-know, right-to-know” basis.

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

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

OHA will not pass along to the tenant the costs of a criminal records check.

13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]

In conducting criminal records checks, if OHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases, if OHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, OHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

OHA Policy

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, OHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information. If the household requests a copy of their summary criminal history record to dispute allegations, the household shall be directed to Alameda County Consolidated Criminal Records Office (CCR),

The family will be given 10 business days from the date of OHA notice to dispute the accuracy and relevance of the information. If the family does not contact OHA to dispute the information within that 10 business day period, OHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

OHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given 10 business days from the date of OHA notice, to dispute the accuracy and relevance of the information. If the family does not contact OHA to dispute the information within that 10 business day period, OHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]

Form, Delivery, and Content of the Notice

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine OHA documents directly relevant to the termination or eviction. If OHA does not make the documents available for examination upon request by the tenant, OHA may not proceed with the eviction [24 CFR 966.4(m)].

When OHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with OHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed. When OHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by OHA for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of OHA, or for a drug-related criminal activity on or off the premises.

OHA Policy

OHA will serve all notices of lease termination in compliance with Code of Civil Procedure section 1162.

All notices of lease termination will include information about the protection against termination provided by the Violence against Women Reauthorization Act of 2013 (VAWA) for victims of domestic violence, dating violence, sexual assault, or stalking (see section 16-VII.C). OHA will also include a copy of the form HUD-50066 and a notice of VAWA rights to accompany the termination notice. Any tenant who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, sexual assault, or stalking of which the tenant or affiliated individual of the tenant is the victim will be given the opportunity to provide documentation in accordance with the policies in sections 13-III.F and 16-VII.D.

Timing of the Notice [24 CFR 966.4(l)(3)(i)]

OHA must give written notice of lease termination of:

- Fourteen (14) calendar days in the case of failure to pay rent
- Three (3) calendar days notice considering the seriousness of the situation (but not to exceed 30 calendar days)
- If the health or safety of other residents, OHA employees, contractors, or persons residing in the immediate vicinity of the premises is threatened
- If any member of the household has engaged in any drug-related criminal activity or violent criminal activity
- If any member of the household has been convicted of a felony
- Thirty (30) calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

OHA Policy

OHA will give written notice of 14 calendar days for nonpayment of rent. Additionally, OHA will give written notice of 3 calendar days for drug-related, weapons-related; violent criminal activity or any other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, OHA staff, contractors, or persons residing in the immediate vicinity of the premises; or if any member of the household has been convicted of a felony. For all other lease terminations, OHA will give 30 day's written notice or, if state or local law allows less than 30 days, such shorter notice will be given.

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]

When OHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

OHA Policy

If, after receiving a notice of initial noncompliance, the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family

will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy. Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for pro-ration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with OHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for OHA's informal hearing procedures.

13-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]

Eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. OHA may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

OHA Policy

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, OHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, OHA will seek the assistance of the court to remove the family from the premises as per state and local law.

OHA may not proceed with an eviction action if OHA has not made available the documents to be used in the case against the family nor afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]

When OHA evicts an individual or family for criminal activity, including drug-related criminal activity, OHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

13-IV.G. RECORD KEEPING

OHA Policy

A written record of every termination and/or eviction will be maintained by OHA at the development where the family was residing, and will contain the following information:

- Name of resident, number and identification of unit occupied
- Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently
- Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)
- Date and method of notifying the resident
- Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions

APPENDIX 13.1 OHA FOR-CAUSE EVICTION GUIDELINES

For-Cause Eviction Guidelines

The For-Cause Eviction Guidelines are intended for use by OHA's staff in the implementation of existing OHA occupancy policies regarding tenant evictions for causes such as drug-related, weapons-related and/or violent criminal activities that threatens the health and safety or right to peaceful enjoyment of the premises by other tenants. These guidelines do not apply to cases that involve only the failure to pay rent or maintenance charges.

The guidelines are consistent with OHA's commitment to make every reasonable effort to promote safer public housing communities and assure that residents are given legitimate opportunities for successful program participation.

The decision whether to initiate proceedings to terminate tenancy in all For-Cause Evictions remains a matter of judgment. Staff of OHA will consider all circumstances with each individual case.

The Deputy Executive Director for the Office of Property Operations or his/her designee is required to review all For-Cause Evictions.

Objective

The guidelines are used by OHA staff to meet a series of objectives in weighing the variety of factors and considerations involved in responding to a lease violation. When in conflict, OHA will attempt to meet the objectives in order of importance. The order of importance of the objectives is as follows:

- Protecting the residents of public housing, their neighbors, OHA staff, and others who work or visit OHA property from the negative impact and influences of drugs and other crimes
- Preventing behavior and acts that seriously damage or destroy OHA property, place such property at risk, or render it unsuitable for the purpose of providing safe and decent housing
- Preserve the tenancy and provide residents an opportunity to learn from mistakes that can be remediated.

Types of “For-Cause” Evictions

In general, lease violations that may result in “For-Cause” evictions can be divided into three areas, with the first being the most serious and the third being the least serious.

- Crime is related to use, sale or manufacture of drugs; involves a weapon; is violent; or poses an immediate threat to health and safety.
- Crime is not related to drugs, does not involve a weapon, is not violent and does not pose an immediate threat.
- Lease violation - no crime involved

Circumstances of Lease Violation

In all cases, a review is to be made of all circumstances of the event or events. Further considered is to be given to the other related issues that follow:

- Who was the person involved?
 - Head of household or Co-tenant
 - Household member
 - Guest
- Did the head of household or co-tenant know of the incidents or involvement?
- Have there been any prior incidents of a similar nature?
- Has there been any counseling or warning given to the head of household and/or co-tenant?
- Has there been any involvement of social services providers to the family?
- Would intervention by social services providers be appropriate?
- What have been the consequences for other residents in the unit and neighbors of OHA property?
- What are the likely consequences for other residents in the unit and neighbors of OHA property?

Counseling, Warning, And Supportive Services Needs Assessment

A meeting is to be held with the head or co-tenant in which the incidents and consequences are to be discussed. Following the discussion, a written summary of the discussion, including any warning and any instructions and expectations is to be sent to the head and co-tenant with copies to the tenant file along with any other appropriate documentation. If warranted by the serious nature of the incident, by the threat to other residents or neighbors, by the number of incidents, or by the history of incidents, either a three-day or thirty-day notice is to be prepared and served. Any counseling meeting described in this section does not apply to any case type except for criminal activities that threaten the health, safety or right to peaceful enjoyment of the premises by other tenants.

When determined to be appropriate, the Property Manager/Property Administrator/Assistant Property Administrator (PM/PA/APA) will coordinate with the Resident & Community Services Department to arrange the appropriate supportive services in response to the family's needs.

Types of Notices Three (3)-Day Notice

Three (3)-Day Notices are warranted in the event of drug-related, weapon-related, and/or violent criminal acts, or lease violations which pose an immediate threat to the health and safety of other residents, OHA staff or surrounding neighbors, committed by the Head of Household or Co-tenant, which are substantiated with verifiable evidence.

Thirty (30)-Day Notice

Thirty (30)-Day Notices are appropriate for all other matters as described above when eviction is warranted.

File Review and Approval

The Property Management personnel prepares a case outline in chronological order.

The Assistant Director consults with the Property Management personnel and will review all relevant information and forward the file to the Staff Attorney. .

The Staff Attorney will meet with Director of Property Management and make recommendation to the Deputy Executive Director

The Deputy Executive Director or designee reviews all recommendations regarding For- Cause evictions. Only after receiving the Deputy Executive Director written approval shall such cases be filed. The Staff Attorney will handle all legal inquiries pertaining to unlawful detainer matters.

Executive Director Review

In the event that the Deputy Executive Director and his designee and the Authority's legal representative disagree on the course of action regarding a particular case, the file will be forwarded to the Executive Director for final decision.

CHAPTER 16: PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this ACOP. The policies are discussed in six parts as described below:

Part I: Setting Utility Allowances. This part describes how utility allowances are established and revised. Also discussed are the requirements to establish surcharges for excess consumption of OHA-furnished utilities.

Part II: Establishing Flat. This part describes the requirements and policies related to establishing and updating flat rent amounts.

Part III: Repayment of Family Debts. This part contains policies for recovery of monies that have been underpaid by families, and describes the circumstances under which OHA will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part IV: Public Housing Assessment System (“OHA”). This part describes OHA indicators, how OHA is scored under OHA, and how those scores affect OHA.

Part V: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies OHA will follow.

Part VI: Reporting and Record Keeping for Children with [Environmental Intervention Elevated Blood Lead Level](#). This part describes OHA’s reporting responsibilities related to children with [environmental interventionelevated](#) blood lead levels that are living in public housing.

Part VII: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault and stalking; and maintaining the confidentiality of information obtained from victims.

Part VIII: Conflict of Interest Policy. This part describes OHA’s conflict of interest policies in connection with all OHA administered Section 8 programs.

PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]

16-I.A. OVERVIEW

OHA must establish allowances for OHA-furnished utilities for all check metered utilities and for resident-purchased utilities for all utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

OHA must also establish surcharges for excess consumption of OHA-furnished utilities [24 CFR 965.506].

OHA must maintain a record that documents the basis on which utility allowances and scheduled surcharges are established and revised, and the record must be made available for inspection by residents [24 CFR 965.502(b)].

16-I.B UTILITY ALLOWANCES

OHA must establish separate allowances for each utility and for each category of dwelling units OHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of OHA in establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy- conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment [24 CFR 965.505].

Utilities include gas, electricity, fuel for heating, water, sewerage, and solid waste disposal for a dwelling unit. In addition, if OHA does not furnish a range, the family must be granted a utility allowance for the range they provide [24 CFR 965.505].

Costs for telephone, cable/satellite TV, and internet services are not considered utilities [PH Occ GB, p. 138].

Utility allowance amounts will vary by the rates in effect, size and type of unit, climatic location and setting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy use [PH Occ GB, p. 138]. Chapter 14 of the *PH Occupancy Guidebook* provides detailed guidance about establishing utility allowances.

Utility Allowance Revisions [24 CFR 965.507]

OHA may use its current MTW utility allowance schedule at scheduled reexaminations.

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

OHA Policy

Unless OHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after a new allowance is adopted, up to and including any utility allowance schedule developed under MTW authority.

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

16-I.C. SURCHARGES FOR OHA-FURNISHED UTILITIES [24 CFR 965.506]

For dwelling units subject to allowances for OHA-furnished utilities where check meters have been installed, OHA must establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis or for stated blocks of excess consumption, and must be based on OHA's average utility rate. The basis for calculating the surcharges must be described in OHA's schedule of allowances. Changes in the amount of surcharges based directly on changes in OHA's average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

For dwelling units served by OHA-furnished utilities where check meters have not been installed, OHA must establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of OHA-furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of OHA-furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to OHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

OHA Policy

OHA does not have OHA-furnished utilities.

16-I.D. NOTICE REQUIREMENTS [965.502]

OHA must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and must:

1. Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.
2. Describe the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.
3. Notify residents of the place where OHA's documentation on which allowances and surcharges are based is available for inspection.
4. Provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.

16-I.E. REASONABLE ACCOMMODATION [24 CFR 965.508]

On request from a family that includes a disabled or elderly person, OHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family [PH Occ GB, p. 172].

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

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

PART II: ESTABLISHING FLAT RENTS

16-II.A. OVERVIEW

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Flat rents are also used to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].

~~Public housing flat rents are needed to prorate assistance for a mixed family [24 CFR 5.520(d)]. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].~~

This part discusses how OHA establishes and updates flat rents-. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and proration of rents for mixed families are discussed in Chapter 6.

16-II.B. FLAT RENTS [24 CFR 60.253(b) and Notice PIH ~~2015-139~~(HA2017-23)]

Establishing Flat Rents

The 2015 Appropriations Act requires that flat rents must be set at no less than 80 percent of the applicable fair market rent (FMR). Alternatively, the PHA may set flat rents at no less than 80 percent of the applicable small area FMR(SAFMR) for metropolitan areas, or 80 percent of the applicable unadjusted rents for nonmetropolitan areas.

For areas where HUD has not determined a SAFMR or an unadjusted rent, PHAs must set flat rents at no less than 80 percent of the FMR or apply for an exception flat rent.

The 2015 Appropriations Act permits PHAs to request an exception flat rent that is lower than either 80 percent of the FMR or SAFMR/unadjusted rent if the PHA can demonstrate that these FMRs do not reflect the market value of a particular property or unit.

In order to demonstrate the need for an exception flat rent, PHAs are required to submit a market analysis methodology that demonstrates the value of the unit. The PHA must use HUD's rent reasonableness methodology to determine flat rents. In determining flat rents, PHAs must consider the following:

- Location
- Quality
- Unit size
- Unit type
- Age of ~~property~~the unit
- Amenities at the property and in immediate neighborhood
- Housing services provided
- Maintenance provided by the PHA

- Utilities provided by the PHA and/or landlord for (comparable units in the market study)
- OHA must provide a corresponding key explaining the calculations used for determining the valuation for each factor.

OHA must receive written HUD approval before implementing exception flat rents. PHAs with a previously approved flat rent exception request may submit a written request to extend the approved flat rents for up to two additional years, provided local market conditions remain unchanged. Detailed information on how to request exception flat rents can be found in Notice PIH 2017-23.

OHA is now required to apply a utility allowance to flat rents as necessary. Flat rents set at 80 percent of the FMR must be reduced by the amount of the unit's utility allowance, if any.

~~Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market.~~

~~In accordance with Notice PIH 2015-13 (HA), OHA will set the flat rent at no less than 80 percent of the applicable Fair Market Rent (FMR) adjusted, if necessary, to account for reasonable and applicable utility costs. The new flat rent will apply at the time of admission to all new residents and at the time of transfer from one OHA unit to another. The new flat rent will also be offered to existing residents at their next recertification.~~

~~OHA will comply with the requirements to make a regular flat rent offer, and to provide each household with sufficient information to make an informed choice.~~

~~OHA is prohibited from making financial assistance available to persons who are not citizens or nationals of the United States, and to those who do not have eligible immigration status [24 CFR 5.500]. Therefore, in order to assist mixed families, OHA must prorate assistance. Public housing flat rents are needed in order to calculate the tenant rent for a mixed family. [24 CFR 5.520(d)]~~

Review of Flat Rents

~~No later than 90 days after HUD publishes the effective date of the new annual FMRs/SAFMRs/unadjusted rent, OHA must revise implement new flat rents as necessary based changes to the FMR/SAFMR/unadjusted rent or request an exception. The PHA must offer changes to the flat rent to all new admissions and to existing families at the next annual rent option.~~

~~If the FMR falls from year to year, OHA may, but is not required to, lower the flat rent to 80 percent of the current FMR/SAFMR/unadjusted rent.~~

OHA Policy

If the FMR/SAFMR/unadjusted rent is lower than the previous year, OHA will reduce flat rents to 80 percent of the current FMR/SAFMR.

~~OHA must ensure that flat rents continue to reflect rent values as defined in [24 CFR 960.253(b)] and PIH Notice 2014-12.~~

~~OHA will determine flat rents using a rent reasonableness methodology, as defined in 24 CFR Part 960.253(b), OHA will revise the flat rent amount from year to year based on the findings of a rent reasonableness analysis and changes to the FMR.~~

~~Such a reasonable method may consider:~~

- ~~• Location~~
- ~~• Quality~~
- ~~• Unit size~~
- ~~• Unit type~~
- ~~• Age of property~~
- ~~• Amenities at the property and in immediate neighborhood~~
- ~~• Housing services provided~~
- ~~• Maintenance provided by OHA~~
- ~~• Utilities provided by OHA~~

~~OHA must update the flat rent schedule from year to year based on the rent reasonableness study and any increases to the FMR. If the FMR decreases from the previous year, OHA is not required to lower flat rent to 80 percent of the FMR. Should OHA determine through the rent reasonableness methodology that reasonable rents would be less than 60 percent of the applicable FMR, OHA may choose to complete a rent reasonableness study once every three years, rather than annually.~~

Posting of Flat Rents

OHA Policy

OHA will publicly post the current Flat Rent Schedule on its web site and leasing offices.

Documentation of Flat Rents [24 CFR 960.253(b)(5)]

OHA must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by OHA in accordance with this method.

PART III: FAMILY DEBTS TO OHA

16-III.A. OVERVIEW

This part describes OHA's policies for recovery of monies that have been underpaid by families.

OHA Policy

When an action or inaction of a resident family results in the underpayment of rent or other amounts, OHA holds the family liable to return any underpayments to OHA. OHA will enter into repayment agreements in accordance with the policies contained in

this part as a means to recover overpayments. The term *repayment agreement* refers to a formal document signed by a tenant and provided to OHA in which a tenant acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

When a family refuses to repay monies owed to OHA, OHA will use other available collection alternatives including, but not limited to, the following:

1. Collection agencies
2. Small claims court
3. Civil law suits
4. State income tax set-off program

16-III.B. REPAYMENT POLICY Family Debts to OHA

OHA Policy

Any amount due to OHA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, OHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, OHA will terminate the family's tenancy in accordance with the policies in Chapter 13. OHA will also pursue other modes of collection.

Repayment Agreement Guidelines

Down Payment Requirement

OHA Policy

Prior to or concurrent to the execution of a repayment agreement, the family must pay 25 percent of the balance owed to OHA.

Payment Thresholds [~~PIH 2010-19~~ and ~~24 CFR 982.552 (e)(1)(vii)~~]

Notice ~~PIH 2010-19~~ 2017-12 recommends that the total amount that a family must pay each month—the family's monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family's monthly adjusted income, which is considered "affordable." Moreover, Notice ~~PIH 2010-19~~ 2017-12 acknowledges that PHAs have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

OHA Policy

If a family is paying less than 40 percent of its monthly adjusted income (MAI) in rent, the minimum monthly payment amount will be the greater of the following two amounts:

The difference between 40 percent of the family's MAI and the TTP at the time the agreement is executed \$25

If a family can provide evidence satisfactory to the PHA that a monthly payment amount of \$25 would impose an undue hardship, the PHA may, in its sole discretion, require a lower monthly payment amount.

If the family's income increases or decreases during the term of a repayment agreement, either the PHA or the family may request that the monthly payment amount be adjusted accordingly.

The monthly retroactive rent payment plus the amount of rent the tenant pays at the time the repayment agreement is executed should be affordable and not exceed 40 percent of the family's monthly adjusted income. However, PHAs have the discretion to establish thresholds and p

OHA Policy

~~Amounts under \$1,000 must be repaid within 12 months. Amounts between \$1,000 and \$1,999 must be repaid within 24 months. Amounts between \$2,000 and \$2,999 must be repaid within 30 months. Amounts between \$3,000 and \$5,999 must be repaid within 36 months. Amounts between \$6,000 and \$8,999 must be repaid within 48 months. Amounts between \$9,000 and \$12,000 must be repaid within 60 months, unless stipulated otherwise in court.~~

Execution of the Agreement

OHA Policy

The head of household and spouse/co-head (if applicable) must sign and date the repayment agreement.

Due Dates

OHA Policy

All payments are due by the close of business on the 5th day of the month. If the 5th does not fall on a business day, the due date is the close of business on the first business day after the 5th.

Any court stipulated agreement or court settlement agreement negotiated by OHA and a tenant shall supersede the policy articulated above if these types of negotiated agreements have a different payment date articulated in them.

Late or Missed Payments

OHA Policy

If a payment is not received by the end of the business day on the date due, it will be considered a breach of the repayment agreement and OHA will terminate the tenancy in accordance with the policies in Chapter 13.

Any court stipulated agreement or court settlement agreement negotiated by OHA and a tenant shall supersede the policy articulated above and this section shall not apply to these types of court agreements.

No Offer of Repayment Agreement

OHA Policy

OHA will not enter into a repayment agreement if there is already a repayment agreement in place with the family, or the amounts owed by the family exceed the federal or state threshold for criminal prosecution.

Repayment Agreements Involving Improper Payments

Notice PIH ~~2010-19~~2017-12 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the public housing lease that state the family's obligation to provide true and complete information at every reexamination and the grounds on which OHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to OHA the monthly payment amount specified in the agreement but must also pay to OHA the monthly tenant rent
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of tenancy

PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (OHA)

16-IV.A. OVERVIEW

The purpose of OHA is to improve the delivery of services in public housing and enhance trust in the public housing system among OHA, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

Under MTW Authority, OHA is not required to report through OHA.

~~16 IV.B. OHA INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]~~

~~The table below lists each of OHA indicators, the points possible under each indicator, and a brief description of each indicator. OHA's performance is based on a combination of all four indicators.~~

~~Indicator 1: Physical condition of OHA's properties~~

~~Maximum Score: 30~~

- ~~1. The objective of this indicator is to determine the level to which OHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary, and in good repair.~~
- ~~2. To determine the physical condition of OHA's properties, inspections are performed of the following five major areas of public housing: site, building exterior, building systems, dwelling units, and common areas. The inspections are performed by an independent inspector arranged by HUD, and include a statistically valid sample of the units in OHA's public housing portfolio.~~

~~Indicator 2: Financial condition of OHA~~

~~Maximum Score: 30~~

- ~~1. The objective of this indicator is to measure the financial condition of OHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair.~~
- ~~2. OHA's financial condition is determined by measuring OHA's entity wide performance in each of the following components: current ratio, number of months expendable fund balance, tenant receivable outstanding, occupancy loss, expense management/utility consumption, and net income or loss divided by the expendable fund balance.~~

**Indicator 3: Management operations of
OHA Maximum Score: 30**

1. ~~The objective of this indicator is to measure certain key management operations and responsibilities of OHA for the purpose of assessing OHA's management operations capabilities.~~
2. ~~OHA's management operations are assessed based on the following sub-indicators: vacant unit turnaround time, capital fund, work orders, OHA annual inspection of units and systems, security, and economic self-sufficiency.~~

**Indicator 4: Resident service and satisfaction Maximum
Score: 10**

3. ~~The objective of this indicator is to measure the level of resident satisfaction with living conditions at OHA.~~
4. ~~OHA's score for this indicator is based on the results of resident surveys and the level of implementation and follow up or corrective actions OHA takes based on the results of the survey.~~

~~16-IV.C. OHA SCORING [24 CFR 902 and Subpart F]~~

~~HUD's Real Estate Assessment Center ("REAC") issues overall OHA scores, which are based on the scores of the four OHA indicators, and the components under each indicator. OHA scores translate into a designation for each OHA as high-performing, standard, or troubled.~~

~~A high performer is a OHA that achieves a score of at least 60 percent of the points available under each of the four indicators, and achieves an overall OHA score of 90 or greater.~~

~~A standard performer is a OHA that has an overall OHA score between 60 and 89, and does not achieve less than 60 percent of the total points available under one of the following indicators: 1, 2, or 3.~~

~~A troubled performer is a OHA that achieves an overall OHA score of less than 60, or achieves less than 60 percent of the total points available under more than one of the following indicators: 1, 2, or 3.~~

~~These designations can affect a OHA in several ways:~~

- ~~5. High-performing OHA is eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].~~
- ~~6. OHA that are standard performers may be required to submit an improvement plan to eliminate deficiencies in OHA's performance [24 CFR 902.73(a)].~~
- ~~7. OHA with an overall rating of "troubled" are subject to additional HUD oversight, and are required to enter into a memorandum of agreement ("MOA") with HUD to improve OHA performance [24 CFR 902.75].~~
- ~~8. OHA that fail to execute or meet MOA requirements may be referred to the Departmental Enforcement Center [24 CFR 902.77].~~

~~OHA must post a notice of their final OHA score and status in appropriate, conspicuous, and accessible locations in its offices within two weeks of receipt of its final score and status.~~

PART V: RECORD KEEPING

16-V.A. OVERVIEW

OHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, OHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights [and that comply with VAWA 2013 confidentiality requirements.](#)

16-V.B. RECORD RETENTION

OHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

Notice PIH 2014-20 requires OHA to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

[OHA must keep confidential records of all emergency transfers requested under OHA's Emergency Transfer Plan, and the outcomes of such requests, and retain the records for a period of three years, or for a period of time as specified in program regulations \[24 CFR 5.2002\(E\)\(12\)\].](#)

OHA Policy

~~During the term of each public housing tenancy, and for at least three years~~OHA will keep the last three years of the Form HUD-50058 and supporting documentation and for at least three years after end of all -thereafter, OHA will keep documents related to a family's eligibility, tenancy, and termination.

In addition, OHA will keep the following records for at least three years:

1. An application from each ineligible family and notice that the applicant is not eligible Lead-based paint records as required by 24 CFR 35, Subpart B
2. Documentation supporting the establishment of flat rents and the public housing maximum rent
3. Documentation supporting the establishment of utility allowances and surcharges
4. Accounts and other records supporting OHA budget and financial statements for the program
5. Complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule
6. Other records as determined by OHA or as required by HUD
- ~~6-7.~~ Confidential records of all emergency transfers related to VAWA requested under OHA's Emergency Transfer Plan and the outcomes of such requests

If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 14-II.A.

16-V.C. RECORDS MANAGEMENT

OHA must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

OHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized OHA staff.

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

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (“SSN”), employer identification numbers (“EIN”), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of federal, state, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or OHA may release the information collected.

OHA Policy (~~pending HUD approval~~)

OHA may require each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign the HUD approved OHA Authorization Release Form/Privacy Act Notice form in lieu of the form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family’s eligibility and level of assistance.

Up-front Income Verification (UIV) Records

OHA that access UIV data through HUD’s EIV System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in *Enterprise Income Verification (EIV) System OHA Security Procedures*, Version 1.2, issued January 2005.

OHA Policy

Prior to using HUD’s EIV system, OHA will adopt and implement EIV security procedures required by HUD.

Criminal Records

OHA may only disclose the criminal conviction records which OHA receives from a law enforcement agency to officers or employees of OHA, or to authorized representatives of OHA who have a job-related need to have access to the information [24 CFR 5.903(e)]. OHA must establish and implement a system of records management that ensures that any criminal record received by OHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to OHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

OHA must establish and implement a system of records management that ensures that any sex offender registration information received by OHA from a state or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to OHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by OHA other than under 24 CFR 5.905.

Medical/Disability Records

OHA is not permitted to inquire about the nature or extent of a person's disability. OHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If OHA receives a verification document that provides such information, OHA should not place this information in the tenant file. OHA should destroy the document.

Documentation of Domestic Violence, Dating Violence, Sexual Assault or Stalking

For requirements and OHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault or stalking, see section 16-VII.E.

**PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH
~~ENVIRONMENTAL INTERVENTION~~ELEVATED BLOOD LEAD
LEVEL**

16-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e)]; [Notice PIH 2017-13](#)

OHA has certain responsibilities relative to children with environmental intervention blood lead levels who are living in public housing.

OHA must report the name and address of a child identified as having an ~~environmental intervention~~elevated blood lead level (EBLL) to the public health department within 5 business days of being so notified by any other medical health care professional. OHA must also report each known case of a child with ~~an environmental intervention~~elevated blood lead level (EBLL) to the HUD field office.

OHA Policy

OHA will provide the public health department written notice of the name and address of any child identified as having an ~~environmental intervention~~elevated blood lead level.

OHA will provide written notice of each known case of a child with an ~~environmental intervention~~elevated blood level (EBLL) to the HUD field office and to HUD's Office of Lead Hazard Control (OLHCHH) within 5 business days of receiving the information.

PART VII: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

16-VII.A. OVERVIEW

The Violence against Women Act of ~~2005 and~~ 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the ~~housing choice voucher (HCV)~~ public housing program. If your state or local laws provide greater protection for such victims, those laws ~~take precedence~~ apply in conjunction over with VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and OHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and OHA policies are located primarily in the following sections: Chapter 3, “Eligibility” (sections 3-I.C and 3-III.F); Chapter 5, “Occupancy Standards and Unit Offers” (section 5-II.D); Chapter 8, “Leasing and Inspections” (section 8-I.B); Chapter 12, “Transfer Policy” (sections 12-III.C, 12-III.F, and 12-IV.D); and Chapter 13, “Lease Terminations” (sections 13-III.F and 13-IV.D).

16-VII.B. DEFINITIONS [24 CFR 5.2003; [FR Notice 8/6/13](#)]

As used in VAWA:

- The term *affiliated individual* means, with respect to a person:
 - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
 - Any individual, tenant or lawful occupant living in the household of that individual.
- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- The term *immediate family member* means, with respect to a person:
 - A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
 - ~~Any other person living in the household of that person.~~
 - ~~— The term *stalking* means: To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or~~
 - ~~— To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and~~
 - ~~— In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.~~
 - The term *sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

- The term *stalking* means:
 - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

16-VII.C. NOTIFICATION [24 CFR 5.2005(a)]

Notification to Public

OHA adopts the following policy to help ensure that all actual and potential beneficiaries of its Public Housing are aware of their rights under VAWA.

OHA Policy

OHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

- A notice of occupancy rights under VAWA to program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380, see Exhibit 16-1)
- A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)
- A copy of the PHA's emergency transfer plan (Exhibit 16-3)
- A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 (Exhibit 16-4)

~~A summary of the rights and protections provided by VAWA public housing program applicants and participants who are or have been victims of domestic violence, dating violence, or stalking. The definitions of domestic violence, dating violence, sexual assault and stalking provided in VAWA.~~

~~An explanation of the documentation that OHA may require from an individual who claims the protections provided by VAWA. A copy of form HUD-50066 or HUD-91066, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking.~~

~~A statement of OHA's obligation to keep confidential any information that it receives from a victim unless (a) OHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information.~~

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY)

Contact information for local victim advocacy groups or service providers

Notification to Program Applicants and ~~Participants-Residents~~ [24 CFR 5.2005(a)(1)]

OHA is required to inform program participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

OHA must distribute a notice of VAWA rights, along with the VAWA self-certification form (HUD-5382) at each of these three junctures. ~~Since VAWA provides protections for applicants as well as participants, OHA may elect to provide the same information to applicants.~~

OHA Policy

~~OHA will include information about VAWA in all notices of denial of assistance (see section 3-III.G). VAWA information provided to applicants and participants will consist of the notices in Exhibit 16-1 and 16-2.~~

OHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. OHA will also include such information in all notices of denial of assistance (see Section 3.III.F).

OHA will provide all participants with information about VAWA at the time of admission (see section 85-I.B). OHA will also include information about their rights under VAWA 2013 in notices of termination of assistance. and provide a copy of form HUD-50066 or HUD-91066, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking.(see section 13-IV.D).

OHA is not limited to providing VAWA information at the times specified in the above policy. If OHA decides to provide VAWA information to a tenant following an incident of domestic violence, Notice PIH 2006-42 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases OHA make alternative delivery arrangements that will not put the victim at risk.

OHA Policy

Whenever OHA has reason to suspect that providing information about VAWA to a public housing resident might place a victim of domestic violence at risk, it will attempt to provide the information directly to the victim or by having victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. OHA may decide not to mail info regarding VAWA protections to the victims unit if OHA believes the perpetrator may have access to the victim's mail, unless requested to do so by the victim.

When discussing VAWA with the victim, OHA will take reasonable precautions to ensure that no one can overhear the conversation.

The victim may, but is not required, to designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

16-VII.D. DOCUMENTATION [24 CFR 5.2007]

A OHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation.

OHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy OHA’s request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

1. A completed and signed HUD-approved certification form (HUD-~~50066-5382~~ or HUD-~~91066~~, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking), which must include the name of the perpetrator, if the name is known and safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
2. A federal, state, tribal, territorial, or local law enforcement court or administrative record.
3. Documentation may be signed by the victim, and/or A victim service provider person assisting the victim in addressing domestic violence, dating violence, sexual assault, or stalking or the effects of such abuse may also sign. This person may be an employee, agent or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional in which the professional attests under penalty of perjury to his or her belief that the victim has experienced an incident of domestic violence, dating violence, sexual assault or stalking that meets the grounds for protection under the statute.

~~3.4.~~ _____

OHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,” nor may it require certification in addition to third-party documentation [VAWA [2005](#) final rule].

OHA Policy

Any request for documentation of domestic violence, dating violence, sexual assault or stalking will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

OHA may, in its discretion, extend the deadline for 10 business days. Factors will be considered such as cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further

violence, and the victim's need to address health or safety issues. Any extension granted by OHA will be in writing.

Once the victim provides documentation, OHA will acknowledge receipt within 10 business days.

Conflicting Documentation [24 CFR 5.2007(e)]

In cases where OHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, OHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). OHA may also request third-party documentation when submitted documentation contains information wthat conflicts with texisting information already available to OHA. OHA must honor any court orders issued to protect the victim or to address the distribution of property. Individuals have 30 calendar days to return third-party verification to OHA. If OHA does not receive third-party documentation, and OHA will deny or terminate assistance as a result, OHA must hold separate hearings for the tenants [Notice PIH 2017-08].

OHA Policy

If presented with conflicting certification documents (~~two or more forms HUD-53820066 or HUD-91066~~) from members of the same household, OHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(~~eb~~)(~~2~~)(~~or~~)(~~3~~) and by following any HUD guidance on how such determinations should be made. When requesting third-party documents, the PHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

If OHA does not receive third-party documentation within the required timeframe (and any extensions) the PHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, OHA will hold separate hearings for the applicants or tenants.

Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]

OHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

OHA Policy

If OHA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, or stalking, OHA will document acceptance of the statement or evidence in the individual's file.

Failure to Provide Documentation [24 CFR 5.2007(c)]

In order to deny relief for protection under VAWA, a OHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as OHA may allow, OHA may deny relief for protection under VAWA.

16-VII.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to OHA regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence sexual assault or stalking, must be retained in confidence. This means that OHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

OHA Policy

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

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**EXHIBIT 16-1: SAMPLE NOTICE OF OCCUPANCY RIGHTS UNDER THE
VIOLENCE AGAINST WOMEN ACT, FORM HUD-5380**

[Oakland Housing Authority (OHA)]¹

Notice of Occupancy Rights under the Violence Against Women Act²

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.³ The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that [insert name of program or rental assistance] is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under [insert name of program or rental assistance], you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

¹ The notice uses HPOHA for housing provider but the housing provider should insert its name where HPOHA is used. HUD’s program-specific regulations identify the individual or entity responsible for providing the notice of occupancy rights.

² Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

³ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Protections for Tenants

If you are receiving assistance under [insert name of program or rental assistance], you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under [insert name of program or rental assistance] solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator from the Household

HPOHA may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If HPOHA chooses to remove the abuser or perpetrator, HPOHA may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, HPOHA must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, HPOHA must follow Federal, State, and local eviction procedures. In order to divide a lease, HPOHA may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, HPOHA may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, HPOHA may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- 1. You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
- 2. You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form, or may accept another written or oral request.
- 3. You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

HPOHA will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

HPOHA's emergency transfer plan provides further information on emergency transfers, and HPOHA must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

HPOHA can, but is not required to, ask you to provide documentation to “certify” that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from HPOHA must be in writing, and HPOHA must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. HPOHA may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to HPOHA as documentation. It is your choice which of the following to submit if HPOHA asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by HPOHA with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.

- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that HPOHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, HPOHA does not have to provide you with the protections contained in this notice.

If HPOHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), HPOHA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, HPOHA does not have to provide you with the protections contained in this notice.

Confidentiality

HPOHA must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

HPOHA must not allow any individual administering assistance or other services on behalf of HPOHA (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

HPOHA must not enter your information into any shared database or disclose your information to any other entity or individual. HPOHA, however, may disclose the information provided if:

- You give written permission to HPOHA to release the information on a time limited basis.
- HPOHA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires HPOHA or your landlord to release the information.

VAWA does not limit HPOHA's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, HPOHA cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if HPOHA can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If HPOHA can demonstrate the above, HPOHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

For Additional Information

You may view a copy of HUD's final VAWA rule at: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>.

Additionally, [HPOHA](#) must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **[insert name of program or rental assistance contact information able to answer questions on VAWA]**.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY).

You may also contact **[Insert contact information for relevant local organizations]**.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact **[Insert contact information for relevant organizations]**

Victims of stalking seeking help may contact **[Insert contact information for relevant organizations]**.

Attachment: Certification form HUD-5382 [form approved for this program to be included]

**EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION,
FORM HUD-5382**

CERTIFICATION OF U.S. Department of Housing OMB Approval No. 2577-0286
DOMESTIC VIOLENCE, and Urban Development Exp. 06/30/2017
DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION

Purpose of Form: The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. Date the written request is received by victim: _____

2. Name of victim: _____

3. Your name (if different from victim's): _____

4. Name(s) of other family member(s) listed on the lease: _____

5. Residence of victim: _____

6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____

8. Date(s) and times(s) of incident(s) (if known): _____

10. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and

you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

EXHIBIT 16-3: EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

Oakland Housing Authority

Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Emergency Transfers

In accordance with the Violence Against Women Act (VAWA),⁴ the **Oakland Housing Authority (OHA)** allows tenants or participants of covered programs who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's/participant's current unit to another unit. Emergency transfers as discussed in this Plan are only those moves required as a result of an eligible claim under VAWA. The ability to request a move is available regardless of sex, gender identity, or sexual orientation.⁵ The ability of OHA to honor such requests for tenants/participants currently receiving assistance, however, may depend upon 1) a preliminary determination that the she or he is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, 2) whether another dwelling unit is available, and 3) the move is safe to offer the tenant/participant for temporary or more permanent occupancy.

⁴ Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

⁵ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

This plan identifies tenants/participants who are eligible for an emergency transfer under VAWA, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants/participants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the Federal agency that oversees that OHA is in compliance with VAWA.

Covered Housing Programs

In accordance with 24 CFR 5.2003, this Emergency Transfer Plan applies to applicable HUD-covered housing programs. Covered housing programs operated or administered by OHA consist of the following:

1. Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.
2. Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.
3. Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 et seq.), with implementing regulations at 24 CFR part 574.
4. HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 et seq.), with implementing regulations at 24 CFR part 92.
5. Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability Assistance program (with regulations forthcoming).

6. Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221.
7. Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), with implementing regulations at 24 CFR part 236.
8. HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d) (with regulations at 24 CFR Chapter IX), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f) (with regulations at 24 CFR chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (with implementing regulations at 24 CFR part 882, subpart H).
9. The Housing Trust Fund (12 U.S.C. 4568) (with implementing regulations at 24 CFR part 93).

Covered housing provider refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections. OHA is the covered housing provider for this Emergency Transfer Plan. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be OHA.

Eligibility for Emergency Transfers

A tenant/participant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L as well as under provisions of California state law such as Penal Code §273.5 is eligible for an emergency transfer:

a) if the tenant/participant expressly requests the transfer; and

b) Either:

1. The tenant/participant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit; or

2. In the case of sexual assault, the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premise during the 90-day period preceding the date of the request for transfer. (See 24 CFR § 5.2005(e)(2).)

A tenant/participant requesting an emergency transfer must expressly request the move in accordance with the procedures described in this plan.

Regardless of their compliance with the lease or participant obligations, tenants/participants may still request an emergency transfer if they meet the eligibility requirements in this section. However, qualifying for an emergency transfer does not guarantee continued assistance under the program or a transfer to another covered housing program. The emergency transfer requirements under VAWA do not supersede any eligibility or occupancy requirements that may apply under a covered housing program. (See 24 CFR 5.2005(e)(13).)

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant/participant shall notify OHA's management office and submit a written request for a move to the property/site management office or to **1540 Webster Street, Oakland, CA 94612**. OHA will provide reasonable accommodations to this policy for individuals with disabilities.

Written Request for a Transfer

The tenant's/participant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant/participant reasonably believes that there is a threat of imminent harm from further violence if the tenant/participant were to remain in the same dwelling unit assisted under OHA's program; OR
2. A statement that the tenant/participant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

Confidentiality

OHA will keep confidential any information that the tenant/participant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant/participant gives OHA written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the

tenant. See the Notice of Occupancy Rights under the Violence Against Women Act For All Tenants/participants for more information about OHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

OHA cannot guarantee that a move request will be approved or how long it will take to process a move request. If a tenant/participant reasonably believes a proposed move would not be safe, the tenant/participant may request a move to a different unit. If a unit is available, the transferred tenant/participant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant/participant has been moved. OHA may be unable to move a tenant/participant to a particular unit if the tenant/participant has not or cannot establish eligibility for that unit.

If OHA has no safe and available units for which a tenant/participant who needs an emergency transfer is eligible, OHA will assist the tenant/participant in identifying other housing providers who may have safe units that are immediately available within 30 days to which the tenant/participant could move. At the tenant's request, OHA will also assist tenants/participants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Safety and Security of Tenants/Participants

Pending processing of the move and the actual move, if it is approved and occurs, the tenant/participant is urged to take all reasonable precautions to be safe.

Tenants/participants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants/participants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

Tenants/participants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, FORM HUD-5383

EMERGENCY TRANSFER **U.S. Department of Housing** OMB Approval No. 2577-0286

REQUEST FOR CERTAIN **and Urban Development** Exp. 06/30/2017

VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

(2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records;

communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer: _____

2. Your name (if different from victim's) _____

3. Name(s) of other family member(s) listed on the lease: _____

4. Name(s) of other family member(s) who would transfer with the victim: _____

5. Address of location from which the victim seeks to transfer: _____

6. Address or phone number for contacting the victim: _____

7. Name of the accused perpetrator (if known and can be safely disclosed): _____

8. Relationship of the accused perpetrator to the victim: _____

9. Date(s), Time(s) and location(s) of incident(s): _____

-

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. _____

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

-

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: _____

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

~~VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:~~

~~A current or former spouse or intimate partner of the victim~~

~~A person with whom the victim shares a child in common~~

~~A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner~~

~~A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies~~

~~Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction~~

~~VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~The length of the relationship~~

~~The type of relationship~~

~~The frequency of interaction between the persons involved in the relationship~~

~~VAWA defines *sexual assault* as means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.~~

~~VAWA defines *stalking* as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~

- ~~• Fear for his or her safety or others; or~~
- ~~• Suffer substantial emotional distress.~~

PART VIII: CONFLICT OF INTEREST POLICY

16-VIII.A. OVERVIEW

Neither OHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with any of OHA's public housing programs in which any of the following classes of persons has any interest, direct or indirect, during their tenure or for one year thereafter:

1. Any present or former member or officer of the Authority (except a participant commissioner);
2. Any employee of the Authority, or any contractor, subcontractor or agent of the Authority, who formulates policy or who influences decisions with respect to the programs (except that program participants may be hired as employees of the Authority);
3. Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or
4. Any member of the Congress of the United States.

16-VIII.B. EMPLOYEES WHO ARE ALSO AUTHORITY CLIENTS

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

1. No employees, nor their staff if they are a Manager or Supervisor, shall handle matters related to their own cases or to the cases(s) of member(s) of their family.
2. Employees of the Office of Property Management shall be responsible for reporting to the Director of Human Resources and the Director of Property Management any potential or actual conflict of interest. If the employee is unsure whether or not a conflict of interest exists, the employee shall refer the matter to the Director of Human Resources and the Director of Property Management for a determination.

It shall be the responsibility of the Director of Property Management to ensure that any actions or decisions taken within the Office of Property Management affecting any employee's participant status or the participant status of an employee's relative are in accordance with all applicable policies and procedures. It shall be the responsibility of the Director of Housing Management to ensure that any actions or decisions taken within the Eligibility Department affecting any applicant's status or the applicant status of an employee's relative are in accordance with all applicable policies and procedures. Both Directors shall ensure that the employee or employee's relative shall neither suffer any loss of benefit nor receive any gain of benefits as a result, direct or indirect, of her/his employment at the Authority or her/his relationship to an Authority employee. As such:

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

16-VIII.C. DISCLOSURE

Member of the classes listed below must disclose their interest or prospective interest to OHA and HUD as follows:

Relation to OHA	Disclosure Required	Disclosure Frequency
OHA Board Members All Executive Office Staff All Directors All Section 8 Staff All Public Housing Staff All Asset Management Staff All Eligibility Staff All MIS Staff All Finance Staff	.O <i>CA Statement of Economic Interests</i>	Annually
Contractors Sub-contractors Agents of the Authority	<ul style="list-style-type: none"> • <i>CA Statement of Economic Interests</i> .P <i>OHA Statement of Employee and Familial Participation in Housing Authority Programs</i> 	Upon contract with OHA, annually thereafter Upon contract with OHA, annually thereafter

16-VIII.D. DISCIPLINARY PROCEDURES

It is the policy of OHA to operate all of its programs in an ethical manner and in such a way that no group or individual shall have an unfair advantage in the receipt of OHA's programs and services. OHA will vigorously investigate any suspected violation of its Conflict of Interest policies and will cooperate with HUD's Office of Inspector General, local and OHA police and any other appropriate bodies when conducting investigations of suspected violations.

Appropriate penalties shall be determined for each individual case. Available penalties include:

- a. Written reprimand;
- b. Suspension;
- c. Probation;
- d. Demotion;
- e. Termination; and
- f. Criminal Prosecution.

16-VIII.E. WAIVER CONFLICT OF INTEREST PROVISIONS

The conflict of interest prohibitions detailed under this section may be waived for good cause by the HUD field office.

16-VIII.F. GIFT POLICY

The Office of Property Management utilizes OHA's Gift Policy.

OHA Policy

It is the policy of OHA to operate all of its programs in an ethical manner and in such a way that no group or individual shall have an unfair advantage in the receipt of OHA's programs and services. OHA will vigorously investigate any suspected violation of its Gift Policy and will cooperate with HUD's Office of Inspector General, local and OHA police and any other appropriate bodies when conducting investigations of suspected violations. Appropriate penalties shall be determined for each individual case. Available penalties include:

- a. Written reprimand;
- b. Suspension;
- c. Probation;
- d. Demotion;
- e. Termination; and
- f. Criminal Prosecution.